(20,172.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 246.

SAMUEL H. LEATHE, PLAINTIFF IN ERROR,

vs.

EDWARD L. THOMAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel H. Leathe, plaintiff in error, and Edward L. Thomas, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
b of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Samuel H. Leathe as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Filed Mar. 19 1906.

C. MAMER,
Clerk of Supreme Court.

[Endorsed:] Filed Mar. 19 1906 C. Mamer Clerk of Supreme Court.

1—246

c In the Supreme Court of Illinois.

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court 4th District.

I, Christopher Mamer, Clerk of said Supreme Court, do hereby certify that on the Twenty-ninth day of March in the year of our Lord One Thousand Nine Hundred and Six, a copy of the foregoing Writ of Error for Defendant in error was lodged in my Office, at Springfield, Illinois.

Witness my hand and the seal of said Court this Twenty-ninth day of March, A. D. 1906.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss:*

To Edward L. Thomas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Illinois wherein Samuel H. Leathe is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand nine hundred and six.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Filed Mar. 29 1906.

C. MAMER,
Clerk of Supreme Court.

f On this twenty second day of March, in the year of our Lord one thousand nine hundred and six, personally appeared Victor Koerner before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Edward L. Thomas.

VICTOR KOERNER.

Sworn to and subscribed the 22nd day of March, A. D. 1906.

[Notarial seal Benj. H. Canby, St. Clair Co., Ill.]

BENJ. H. CANBY,
Notary Public.

g In the Supreme Court of Illinois.

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court 4th District.

I, Christopher Mamer, Clerk of said Supreme Court, do hereby certify that on the Twenty-ninth day of March in the year of our Lord One Thousand Nine Hundred and Six, a copy of the foregoing Citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said Court, this Twenty-ninth day of March, A. D. 1906.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

h In the Supreme Court of Illinois.

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court 4th District.

I, Christopher Mamer, Clerk of the Supreme Court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages numbered from One (1) to One Thousand Three Hundred and Forty Four (1344), both inclusive contain a true, perfect and complete copy of the record and proceedings had in the above entitled cause in said Court, including a certified copy of the opinion of the Court, and that pages One Thousand Three Hundred and Forty Five (1345) to One Thousand Three Hundred and Forty Eight (1348), contain a true and correct copy of the assignment of errors upon said record filed in said Court on the Twenty-ninth day of March, A. D. 1906, the original of which remain on file and of record in my said Office.

In Testimony Whereof I have hereunto set my hand and caused the seal of the said Supreme Court of Illinois to be hereunto affixed at Springfield, Ilinois, this Twenty-ninth day of March, in the year of our Lord One Thousand Nine Hundred and Six.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a Supreme Court, Begun and held at Springfield on Tuesday, the Fifth day of April in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present: John P. Hand, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; James B. Ricks, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it Remembered, to-wit: on the 12th day of April A. D. 1904 the same being one of the days of the term of Court aforesaid, there issued out of this Court a certain Writ of Error directed to the Clerk of the Appellate Court of the Fourth District, which is in words and figures following, to-wit:

2 STATE OF ILLINOIS, *Supreme Court, ss:*

The People of the State of Illinois to the Clerk of the Appellate Court of Fourth District, Greeting:

Because, in the Record and proceedings, as also in the rendition of the Judgment of a plea which was in the Appellate Court of Fourth District before the Judge thereof, between Samuel H. Leathe and Edward L. Thomas it is said manifest error hath intervened, to the injury of the aforesaid Samuel H. Leathe as we are informed by his complaint, and we being willing that Error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the Record and proceeding of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Springfield, on the first Tuesday of June next, that the Record and proceedings, being inspected, we may cause to be done therein, to correct the Error, what of right ought to be done according to law.

Witness, The Hon. John P. Hand Chief Justice of our Court, and the seal thereof, at Springfield, this 12th day of April in the year of our Lord one thousand nine hundred and Four.

CHRISTOPHER MAMER,
[SEAL.] *Clerk of the Supreme Court.*

2½ [Endorsed:] No 3623 Supreme Court of Illinois. Samuel H. Leathe *vs.* Edward L. Thomas Writ of Error. This Writ of Error is made a Supersedeas and as such is to be obeyed by all concerned. —— ——, clerk. The record of proceedings in the above entitled case having this day been filed this writ of error, under the rules of Court, is filed in the office of the Clerk. Filed this 12th day of April A. D. 1904. C. Mamer, Clerk.

3 And afterwards, to-wit: on the day last aforesaid there was filed in said Court a certain transcript of record which is in words and figures following, to-wit:

4 EXHIBIT "A."

STATE OF ILLINOIS, *Appellate Court, Fourth District, ss:*

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

I, A. C. Millspaugh, Clerk of the Appellate Court, within and for the Fourth District of said State, hereby certify that this is the original Transcript of the record of said cause filed in said Court on the 26th day of August, A. D. 1902.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Court at Mt. Vernon, Illinois, this 6th day of April, A. D. 1904.

A. C. MILLSPAUGH,
Clerk of Appellate Court.

STATE OF ILLINOIS, *St. Clair County, ss:*

At a regular Term of the Circuit Court within and for the County of St. Clair and State of Illinois, begun and held at the Court House, in the City of Belleville, in said County of St. Clair on Monday, the 14th day of April, A. D. 1902, it being the second Monday of April A. D. 1902, according to the act of the General Assembly, by the Hon. Benj. R. Burroughs, one of the Judges of the Third Judicial Circuit of the State of Illinois, of which the said County of St. Clair forms a part the following proceedings were had, to-wit:

Present: Honorable M. W. Schaefer, Presiding Judge. Honorable Bery R. Burroughs, Judge. John Kickham Sheriff. James A. Farmer State's Attorney. Thomas May, Jr., Clerk.

5 Be it remembered that on the 31st day of December, 1897, the following declaration was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Samuel H. Leathe, plaintiff in this suit, complains of Edward L. Thomas, on a plea of debt.

For that whereas, the plaintiff, by the consideration and judgment of the Circuit Court of the City of St. Louis, Missouri, on the fifth day of March A. D. 1896, recovered a judgment against the defendant by the name of Edward L. Thomas, for the sum of two thousand, two hundred and seventy eight dollars, and sixty three cents ($2,278.63), together with interest on the sum of Three Hundred and Thirty seven Dollars and twenty seven cents (part of said aggregate indebtedness) from said date, at the rate of eight per cent. per annum, until paid, and with interest on the sum of Nineteen Hundred and Forty-one dollars and thirty six cents (the balance of said aggregate indebtedness) at the rate of six per cent. per annum until paid, and also costs of suit as by the record thereof in said Court, appears, a copy of which record duly authenticated the plaintiff now here in Court produces, and which said debt, damages and costs amount to a large sum of money, to-wit, Four Thousand Dollars.

And plaintiff avers that said judgment is in full force and effect and not reversed, annulled or satisfied. Thereby an action had accrued to the plaintiff to have from defendant the sum of Four Thousand Dollars.

And for that whereas, also by the consideration and judgment of the Circuit Court of the City of St. Louis, State of Missouri,
6 on the fifth day of January, 1897, the plaintiff recovered a judgment against the defendant by the name of Edward L. Thomas, for the sum of Nine Hundred and twenty three dollars and seventy-five cents ($923.75) debt and costs of suit, as by the record thereof in said Court appears, a copy of which record, duly authenticated, the plaintiff now here in Court produces, which said debt, damages and costs amount to a large sum of money to-wit, Two Thousand Dollars.

And plaintiff avers said judgment is in full force and effect and not reversed, annulled or satisfied.

Whereby an action has accrued to the plaintiff to demand and have from the defendant the said amount mentioned, to-wit, two thousand dollars. Yet the defendant, has not paid the said amounts, nor any parts thereof, but fails and refuses so to do to Plaintiff's damage of Six Thousand Dollars, wherefore he brings his suit &c.

By G. A. KOERNER &
V. K. KOERNER,
Att'ys for Plaintiff.

7 *Copy of Instrument Sued On.*

STATE OF MISSOURI, *City of St. Louis, ss:*

In the Circuit Court, City of St. Louis, February Term, 1896.

THURSDAY, *March 5th*, 1896.

(96033.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Now at this day comes the plaintiff by attorney, but the defendant, although duly notified by publication and having heretofore entered his appearance herein and having this day withdrawn his answer herein and declined to plead further now comes not but makes default: Wherefore on motion of plaintiff it is ordered by the Court that the petition and attachment herein be taken against said defendant as confessed. Thereupon the Court finds that said defendant is indebted to the plaintiff on the several counts of the petition herein by reason of the instruments of writing sued on as follows: on the first count in the sum of three hundred and thirty-seven and 27/100 dollars, on the second count in the sum of twelve hundred and thirty-eight and 98/100 Dollars, on the third account in the sum of five hundred and eighty-five and 80/100 Dollars, on the fourth account of said petition in the sum of one hundred and sixteen and 58/100 Dollars, making in the aggregate the sum of Two Thousand two hundred and seventy-eight and 63/100 Dollars.

It is therefore considered and adjudged by the Court that the attachment herein be sustained and that the plaintiff recover of said defendant the aggregate indebtedness aforesaid as found to be due, to-wit:

8 Said sum of Two thousand two hundred and seventy-eight and 63/100 Dollars, with interest on the sum of Three hundred and thirty-seven and 27/100 Dollars (part and parcel of said aggregate indebtedness) from this date at the rate of eight per cent. per annum until paid, and with interest on the sum of Nineteen Hundred and forty-one and 36/100 Dollars (the balance of said aggregate indebtedness) from this date at the rate of six per cent. per annum until paid, and also recover of said defendant his costs and charges herein expended, and that execution issue herein in conformity with this judgment.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, certify that the above and foregoing is a true, full and complete copy of the judgment rendered in the above entitled cause as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Office in the City of St. Louis, this 24th day of December, A. D. 1897.

THOS. B. RODGERS,
[SEAL.] *Clerk Circuit Court.*

9 STATE OF MISSOURI, *City of St. Louis, ss:*

In the Circuit Court, City of St. Louis, December Term, 1896.

TUESDAY, *January 5th,* 1897.

(3514.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Now, at this day, this cause coming on for hearing, the said parties come by their respective attorneys, and waiving a jury submit this cause to the Court upon the evidence and proofs adduced, and the Court having heard and considered the same, doth find in favor of the plaintiff and doth assess his damages at the sum of Nine Hundred and twenty-three Dollars and seventy-five cents.

It is therefore considered by the Court that the plaintiff recover of the defendant the damage aforesaid assessed as aforesaid, together with his costs and charges in this behalf expended and that execution issue therefore.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court of St. Louis, do hereby certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this 24th day of December A. D. 1897.

THOMAS B. RODGERS,
[SEAL.] *Clerk of Circuit Court.*

10 Be it remembered that on the 8th day of January, 1898, the following plea of set-off was filed:

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, to the January Term, A D. 1898

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now comes the defendant by A. S. Wilderman, his attorney, and for plea in this behalf says that the plaintiff was before and at the time of the commencement of this suit, and still is indebted to him, the defendant, in the sum of Sixty-five Thousand Dollars, for so much money before that time received by the plaintiff for the use of the defendant; and in a like sum for interest on divers sums of money before that time forborne by the defendant to the plaintiff at his request for divers spaces of time before then elapsed; and in a like sum for money found to be due from plaintiff to defendant in an account then and there stated between them; which said sums of mooney so due from the plaintiff by reason of the non-performance by the defendant of the several supposed promises in the said declaration mentioned and out of which said sums of money the defendant is ready and willing and hereby offers to set off and allow to the plaintiff the full amount of the said damages.

And this the defendant is ready to verify, wherefore he prays judgment, &c.

By DILL & WILDERMAN,
Attorney- for the Defendant.

Copy of Account in Plea Set Off.

Samuel H. Leathe, Dr., to Edward L. Thomas, Defendant.

To money received by Plaintiff for use of Defendant...	$65000.00
To money for interest on sums forcborne to Plaintiff by Defendant	65000.00
To money due on account stated.....	65000.00

11 Be it remembered that on the 12th day of January, 1898, the following demurrer to defendant's plea of set-off was filed, as shown by the motion Docket of the Circuit Court of St. Clair County, Illinois:

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, January Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Now comes the said Plaintiff and as to the plea herein filed by Defendant says plea is not sufficient in law to be replied unto and therefore prays judgment &c.

G. A. KOERNER,
Att'y for Plaintiff.

12 Be it remembered that on the 28th day of February, 1898, the following motion for a rule on defendant to file bill of particulars was filed:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debts.

Now comes said Plaintiff, and moves the Court for a rule on said defendant to file with his first plea of set-off in said cause a bill of particulars, said Plaintiff showing that said plea contains only the common counts.

G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Plaintiff.

13 Be it remembered that on the 12th day of March, 1898 the following bill of particulars was filed:

Account Chipley and Leathe.

Delivered January 12, 1893.

Organization.

1889	License	$2.00
	Certificate	3.00
	Notices	1.00
	Publication	7.50
	Recording	12.25
	Publication	7.50
	Meeting	3.00
	Recording	16.00
	Certified copy	2.00
	Printing	39.00
	Recording	9.60
	Certified copy	2.00
	Seal	6.00
1890	Engraving Bonds	745.00
	Trustee's fee	500.00
	Executing bonds	8.00
	Book	2.00
	Stamp	1.00
	Stock book	3.00
1891	Publication	7.50
	Notices	1.00
	Recording	16.00
	Executing	5.00
	Meeting	8.00
	Printing	56.00
	Binding	7.00
	Stamps	12.50
	Stationary	54.00
	Printing Circulars	6.00
	Distributing	2.50
1892	Printing ordinances	45.00
	Engraving	625.00
	Publication	7.50
	Notices	1.00
	Meeting	8.00
	Printing	56.00
		$2287.85

Paid by Capt. Adams	$4.00	
" " Edward L. Thomas	2283.85	
	$2287.85	$2287.85

14 **Sundries.**

1889	Expense to St. Louis	$172.00	
	Assistance	250.00	
	Livery	152.00	
1890	Expenses to St. Louis and East St. Louis	262.00	
	Expenses to Chicago	75.00	
	Expenses to Springfield	47.00	
	Expenses to New York, Needles and self	306.00	
	Horse and harness	245.00	
	Board of horse	84.00	
	Livery	36.00	
1891	Securing ordinance	135.00	
	Chicago, Needles and self	74.00	
	Churchill contract	1500.00	
	Sullivan & Townsend	1000.00	
	Options on coal	250.00	
	Rights of way	150.00	
	Knispel C. P. fee	250.00	
	Expenses to St. Louis and East St. Louis	190.00	
	Expenses to Chicago	39.00	
	Board of horse	165.00	
	Livery	21.50	
	Ferry	1.00	
1892	Expenses to St. Louis	250.00	
	Expenses to East St. Louis	100.00	
	Stenographers	122.00	
	Petition	200.00	
	Ordinances of Belleville	456.00	
	Repairs of buggy	12.60	
	Board of horse	121.00	
	Livery	119.35	
	Repairs	6.00	
	Expenses to Chicago	22.00	
	Plats	9.00	
		$6836.70	
	Paid by Capt. W. A. Adams..		1.00
	Paid by Edward L. Thomas..		6835.70
		$6836.70	$6836.70

15 Right of Way.

1890	St. Louis Alton & Terre Haute R. R. Co.	$3100.00
	James Dunn	500.00
	Walter & Mary Cowans	200.00
	Joseph Touchette	350.00
	Joseph Beswick and wife	1000.00
	Oliver Broulette	1000.00
	Wilhelmina Roemig	300.00
	Andrew Touchette	20.00
	Thomas Burke for Donnelly heirs	200.00
	Alexander Touchette	20.00
1891	E. L. McDonald	360.00
	August Schmidt	500.00
	Mrs. A. Ehrstein	50.00
	Wm. Lepere	20.00
1892	Wm. Atchison	425.00
	George Merod	35.00
	George Sherod	70.00
		$8150.00

Paid by Capt. W. A. Adams	6920.00	
Paid by Edward L. Thomas	1230.00	
	$8150.00	$8150.00

Contract Graded.

1891	Alexander Forst	$700.00
	Mary O. Thomas	2000.00
	Joseph Ehrstein	500.00
	Adam Emge	600.00
	Ann Phillips	1000.00
	Peter Schwinn	500.00
	Jacob Voellinger	1000.00
	Mrs. Peter Voellinger	900.00
	M. T. Stookey	2000.00
	Fred Tilling	1250.00
	J. Linn	50.00
	Consolidated Coal Co.	100.00
		$18750.00
	Paid by Adams and Thomas	8150.00
	To be paid by Thomas	$10600.00

This must be credited to Thomas in the account or paid by Company (See letter).

16 Coal.

1890	160 acres at $60.00	$9600.00	
	Int. on deferred payments to Jan. 1st, 1893	972.00	
	Stock book	3.00	
	Stamp	.25	
	Seal	6.00	
	Blank Book	.60	
	License	2.00	
	Trial shaft		
1891	Supplies	58.45	
	Lumber	8.40	
	Fan	8.00	
	Material	13.00	
	Hire of mule	21.00	
	Hire of horse and driver	25.00	
	Hauling	13.50	
	Labor	277.95	
		$11009.15	
	Paid by Capt. W. A. Adams		$2409.85
	" " Thomas		8599.30
		$11009.15	$11009.15

The deferred payment of $7,200 was secured by mortgage and notes of Edward L. Thomas, which with interest for 2 yrs. 3 mo. at 6% amounts to $8,172.00, which must be paid by the Company, and as Thomas has given notes, this is credited to him, and goes into his account.

Land.

1890	Land of Donnelly heirs	$1696.10	
	Land of McKracken	3220.00	
		$4916.10	
	By land sold to J. Slemmins	2000.00	
	" " " " A. Pfeiffer	3400.00	
		$5400.00	
	To land of W. Roemig	1500.00	
	" " " Oliver Bouilette	3060.00	
		1000.00	
		$5560.00	
	Paid by Capt. W. A. Adams		$4916.10
	" " profit on sale		483.90
	" " Edward L. Thomas		160.00
		$5560.00	$5560.00
	Due Capt. Adams		4916.10
	" Edward L. Thomas		160.00
			$5076.10

The title of these three tracts purchased by me from proceeds of land sold and formerly purchased by Capt. W. A. Adams is in Edward L. Thomas, and will be transferred to the Company when demanded free of all incumbrances.

17 Construction.

1890	Grubbing	54.20	
	Hauling	1.75	
1891	Grubbing	261.50	
	Cutting piles	63.00	
	Hewing	119.20	
	Timber	63.00	
	Hauling	97.00	
	Hire of wagon	4.00	
	Lumber	.90	
	Bridges	38.00	
	Material for	15.50	
	One car of culvert pipe	118.00	
	Two cars of culvert pipe	241.35	
	Lime, sand and cement	14.85	
	Brick	24.00	
	Laying culverts	113.25	
1892	1 car of culvert pipe	102.60	
	Hauling	24.00	
	Laying culverts	84.00	
1890	Grubbing	127.00	
1891	Grading 118760 yds. at 13¢	15438.80	
1892	Grading 16000 yds. at 18¢	28800.00	(estimated)
1889	Engineer Grauer	178.20	
1890	" Grauer	398.54	
	" Reis	383.21	
1891	" Reis	386.16	
1892	" Reis	1718.81	
		$48873.82	
	Paid by Capt. W. A. Adams		$9423.77
	" " E. L. Thomas		39450.05
		$48873.82	$48873.82

Grading is here charged as having been paid by E. L. Thomas the amount due him, as he has contracted with Mr. Boling, he must account to him. Expenses of grading have all been borne by Thomas. And the Company owes nothing outside but $3000.00 which cannot be collected under contract until road is completed or bonds sold.

Recapitulation.

Organization	$2287.85	
Sundries	6836.70	
Right of way	18750.00	
Construction	48873.82	
Coal	11009.15	
Land	5076.10	
	$92833.62	
Paid by Capt. W. A. Adams		$23674.72
" " E. L. Thomas		50386.90
Amount for which Thomas is responsible		18772.00
	$92833.62	$92833.62

18 *Changes Made on Settlement with Railway Company August 21, 1893.*

Organization		none
Sundries:		
Knispel fee	$250	
Livery in 1893 prior to March 25	28	
Board of horse	30	
Expenses to St. Louis and East St. Louis	72	
		$380.00
Right of way		
Account of August Schmidt, add $45		45.00
Land		
Add $300 Oliver Bouilette		300.00
Coal		none
		$725.00
Construction taken from estimated Grading, Grading 145,876 yds:		
138876 at 18c	$24997.68	
7000 at 11c	770.00	
	$25767.68	
Less $200 added for engineer 28,800 — 25,676.68 — 3,032.32 from which deduct $200 added liens		$2832.32
Total less		$2107.32
Total due Thomas in 1892		$48279.58
With six per cent. to date of Settlement with R. R. Co.		4742.65
Total Aug. 1st, 1893		$53022.23

With interest at six per cent. per annum.

In addition to above for services performed for S. H. Leathe in procuring rights of way of Tilling, Gass & Phillips and in condemnation suit against Brandenburger $625.00

19 Be it remembered that on the 10th day of February, 1898, the following 2d Special Plea of set-off was filed:

And for further plea in this behalf Defendant says that the said Plaintiff was before and at the time of the commencement of this suit and still is indebted to him the defendant in a large sum, to wit the sum of Seventy Thousand Dollars upon a contract heretofore entered into by said Plaintiff with Defendant which said contract is as follows, that is to say:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe $255,000.00 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300.00 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000.00 5 per cent. bonds of said Company. The present bonds, $150,000.00 to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson $2000.00 with interest and Third National Bank $750.00 with interest in St. Louis.

Same proportion of stock to be maintained in coal or other Companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas.

Edward L. Thomas to have $104,000.00 of stock, Bart S. Adams $50,000, and John T. Taylor $12,700.00; each part- to receive back amounts advanced to the enterprise as soon as the bonds are sold.

Said Thomas and Adams to receive amount as per statement *me* rendered and said Leathe to receive amount to be advanced by him and balance to go into treasury of the Railway Company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

20 Dated Jan. 24th, 1903.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

21 In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe, all sums coming to me as a guarantee of the statement made in my letter to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24th, 1893.

(Signed) EDWARD L. THOMAS.

And defendant further avers that afterwards to-wit; on the 25th day of March A. D. 1893, the property of the said Railway Company in said contract mentioned was by mutual consent transferred to a corporation known as the Belleville City Railway Company, and the said enterprise was thereafter exclusively carried on under the

name and franchises of the said Belleville City Railway Company. And Defendant avers that on said last mentioned day said Plaintiff entered into the following agreement touching and regarding the bonds of said Railway Company that is to say,

At a meeting of the Stockholders of the Belleville City Railway Company, held at the office of the Company in the City of Belleville, on the 25th day of March, A. D. 1893, the following proceedings were had: Present, Charles W. Thomas, owing 4996, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one share, Bartlett S. Adams, one share; Mr. Adams was made president and C. W. Thomas Secretary. The following named persons were unanimously elected Directors of the Company, Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor and Bartlett S. Adams, and the meeting adjourned.

BART S. ADAMS,
Pres. of Meeting.

(Signed) CHARLES W. THOMAS,
Secretary.

At a meeting of the Directors of the Belleville City Railway Company held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25th, 1893, the following proceedings were had, all the Directors being present.

Mr. Bartlett S. Adams was elected President of the Com-
22 pany, and Mr. Charles W. Thomas, Secretary, Mr. Taylor introduced the following resolution and moved its adoption: "Resolved, that a call of one hundred per cent. be made upon the capital stock of this Company, payable on or before May first, 1893, and that the Secretary be directed to give written notice of this *all* to all the stockholders, within 20 days." Mr. E. L. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel L. Leathe now appeared before the board and proposed to sell and convey to this Company for the sum of $499,500.00 certain property described and referred to in his deed to the Company of this date which was produced but which is not delivered. Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give this Company credit on such purchase money for any amount which he may hereafter owe as a stockholder of the Company on account of calls made upon any of its stock he may hereafter acquire and may credit on said stock calls the value of the service he may hereafter perform in floating this Company's bonds, and also the indebtedness due him from the Company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the Company, subject to calls made thereon to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as full payment of the call of one hundred per cent. made at this meeting upon his 4995 shares of the stock of this Company, upon the condition that he float the $500,000. of bonds of this Company,

heretofore authorized to be issued, any of such bonds that he sells to net this Company such a price as may be hereafter agreed upon between him and the Board of Directors of this Company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the Company to be accounted for by him at par to the end that the railway of this Company may be at once
23 constructed and operated from some point within the original City of Belleville to the Mississippi River; and upon further condition that Mr. Leathe protect this Company from any decree foreclosing the mortgage to secure said bonds until one year after its railway is in operation and that Mr. Leathe be requested to sign the record of the proceedings of this Board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion and it was unanimously adopted.

I accept the terms of the foregoing resolution.

(Signed) SAMUEL H. LEATHE.

And the Board adjourned to meet subject to the call of the President.

(Signed) BART. S. ADAMS, *Pres.*
(Signed) CHARLES W. THOMAS, *Sec'y.*

And Defendant further avers that said Plaintiff on to-wit, the ninth day of November A. D. 1895 sold said bonds in said contract an- agreement for the sum of Five Hundred Thousand Dollars which said sum he the said Plaintiff then and there received. And Defendant avers that said Plaintiff has expended in building said Railway under said contract and agreement a large sum of money—to wit, the sum of Three Hundred Thousand Dollars. And Defendant avers that there was at the time of the making of the contract due defendant as per statement in said contract set forth a large sum of money, to-wit, the sum of Seventy Thousand Dollars which was to be paid Defendant as in said contract specified.

The Defendant avers that said Plaintiff after receiving said sum so expended as aforesaid by him under said contract and agreement had remaining in his hands, and still has as the proceeds of the said sale of said bonds a large sum of money, to-wit, Two Hundred Thousand Dollars, out of which by the terms of said contract said sum so due said Defendant as aforesaid was due and payable, to-wit, on the day of year last aforesaid at the County aforesaid. By
24 means whereof Plaintiff became liable to pay to said Defendant said sum of Seventy Thousand Dollars which said sum of money so due from the Plaintiff to the Defendant as aforesaid exceeds the damages sustained by the plaintiff by reason of the non-payment by the Defendant of the said several judgments in said declaration mentioned and out of which said said sum of money the defendant is ready and willing and hereby offers to set off and allow to the Plaintiff the full amount of said damages, and this the Defendant is ready to verify wherefore he prays judgment &c.

By DILL & WILDERMAN,
Attorney- for Defendant.

25 Be it remembered that on the 7th day of March, 1898, the following special demurrer to the 2nd special plea of set off was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

As to the plea of said defendant, marked second plea or set-off, the said Plaintiff says the said plea is not sufficient in law, an- for special cause of demurrer, in addition to the general demurrer, plaintiff says, that the matter in said plea set forth can not be set off in law against the cause of action sued for in this case and further, that the damages sought to be recovered in said second plea of set-off are unliquidated, and therefore not subject to be set-off.

G. A. KOERNER &
VICTOR K. KOERNER,
Att'ys for Pl'ff.

26 Be it remembered that on the 10th day of February, 1898, the following 3rd. special plea of set-off was filed:

And for further plea in this behalf the Defendant says that the said Plaintiff was before and at the time of commencement of this suit and still is indebted to him the Defendant in a largs sum of money, to-wit, in the sum of Sixty Five thousand dollars.

For that Whereas, the Belleville and St. Louis Railway Company on to-wit, the 25th day of March A. D. 1893, at the County of St. Clair aforesaid, being then and then the owner of a large tract of valuable land conveyed the same by deed of that date duly acknowledged and delivered to said Plaintiff, for and in consideration of one Dollar and other valuable considerations moving from him the said Plaintiff to it the said Belleville and St. Louis Railway Company.

And Defendant avers that said Plaintiff then and there accepted said deed. And Defendant further avers that the other valuable consideration moving from said Plaintiff to said Railway Company was the promise and agreement of said Plaintiff then and there made in consideration of said deed, and as payment of the purchase money of the property conveyed by said deed, that he, the Plaintiff, would then and there satisfy and pay the indebtedness of the said Railway Company, then and there existing and due, from the said Railway Company to divers parties.

And Defendant further avers that said Railway Company was then and there indebted to the Defendant in a large sum of money, to-wit, in the sum of Sixty Thousand Dollars, of which the said Plaintiff then and there had full notice.

And Defendant further avers that the said indebtedness of the said Railway Company to the Defendant was part of the indebtedness of the said Railway Company, then and there promised and agreed to be paid by said Plaintiff as part of the consideration of said deed.

27 Defendant further avers that at the September Term A. D. 1893, of the Circuit Court in and for the said County of St. Clair and State of Illinois, a Court having full jurisdiction of such matters, said Defendant commenced an action against said Railway Company, to recover said amount so due him as aforesaid.

And Defendant avers that said Railway Company caused said Plaintiff to be notified of the pendency of said action, and authorized the said Plaintiff to defend said suit in its name, if he, Plaintiff, saw fit, and Defendant avers that said Plaintiff in pursuance of said notice, employed counsel, filed pleas, and entered into and upon the defense of said cause.

And Defendant avers that the issue of said cause was as to whether the amount claimed by said defendant from said Railway Company was then due and payable to him the said Defendant.

And Defendant further avers that after the trial of said cause upon evidence introduced by said Defendant and by said Plaintiff acting as aforesaid, the said Court rendered a judgment for this Defendant, Plaintiff in said cause, and against the Defendant in said cause, in the sum of $53,022.23. which said judgment is in full force and effect; and which this Defendant is ready to show by the record thereof, here now shown in Court.

And Defendant further avers, that before the trial of said cause, in said Court, and while the same was standing for trial, the said Plaintiff, in his name and in the name of the said Belleville and St. Louis Railway Company and in the name of the Belleville City Railway Company, filed in said Court a bill for injunction, against this Defendant, to enjoin him from proceeding with his said cause against said Belleville and St. Louis Railway Company, and from recovering a judgment in said cause against said Railway Company on said indebtedness; that among other things one of the issues made by the said bill and the answer of this Defendant

28 thereto, was as to whether the amount claimed by this Defendant from the said Belleville and St. Louis Railway Company was then due and payable, and whether said Plaintiff herein, had assumed by reason of said deed from said Railway Company to him, the Plaintiff, and as part of the consideration therefor, the payments of the debts of the said Railway Company of which the amount claimed by this Defendant was one. That upon said issue a full hearing was had by the Court and it was then and there fully adjudicated and said injunction was denied, and said bill dismissed.

All of which this Defendant here now shows to the Court by the records and proceedings and decree of said Court here now shown to the Court. By means whereof the Plaintiff became liable to pay the amount of said judgment, with lawful interest to-wit, the sum of Sixty Five Thousand Dollars, to the Defendant, which said sum of money so due from Plaintiff to Defendant as aforesaid exceeds the

damages sustained by the plaintiff by reason of the non-payment of the said several judgments in said declaration mentioned and out of which said sum of money the Defendant is ready and willing and hereby offers to set off and allow to the Plaintiff, the full amount of the said damages, and this the defendant is ready to verify, wherefore he prays judgment &c.

By DILL & WILDERMAN,
Attorneys for Defendant.

29 Be it remembered that on the 7th day of March, 1898, the following special demurrer to the 3rd plea of set-off was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And as to the plea of said Defendant marked third plea of set-off, the said plaintiff says, that said plea is not sufficient in law, and for special cause of demurrer, in addition to the general demurrer, plaintiff says, that the matter in said plea set forth, can not be set off in law against the cause of action sued for in this case and further, that the damages sought to be recovered in said third plea of set-off are unliquidated, and therefore not subject to be set off.

G. A. KOERNER &
VICTOR K. KOERNER,
Att'ys for Pl'ff.

30 Be it remembered that on the 12th day of April, 1898, the following 4th plea of set-off was filed:

And for further plea in this behalf, defendant says that the said plaintiff was before and at the time of the commencement of this suit and still is indebted to him the defendant in a large sum, to-wit, in the sum of Sixty Five Thousand Dollars upon a contract theretofore entered into by said plaintiff and the Belleville and St. Louis Railway Company for the benefit of the defendant.

And defendant avers that on, to-wit, the twenty-fifth day of March A. D. 1893, said Belleville and St. Louis Railway Company executed and delivered to said plaintiff a deed as follows, that is to say:—

The grantor, the Belleville and St. Louis Railway Company, a Corporation of the State of Illinois, in consideration of One Dollar to it in hand pand by Samuel H. Leathe of the City of St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe, all the following described land situated in the County of St. Clair and State of Illinois: All that tract of

land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

Also all the rights of way, easements, grading, and superstructure thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the said Leathe that it will upon demand convey good and proper deed of conveyance to said Leathe and his assigns any land, easements, right of way, privilege or immunity it may hereafter acquire.

31 Dated this 25th day of March A. D. 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
[SEAL.] By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

32 We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS.
HENRY M. NEEDLES.
JOH- T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said County, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who, being by me duly sworn upon oath state, that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument for the uses and purposes therein set forth as president of said Company. That he is President of said Company and executed said deed as president by order of the stockholders of said Company whose names are subscribed thereto also.

That said Needles is secretary of said Company and that he attached the seal of said Company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March A. D. 1893.

A. F. MILLER,
Notary Public.

Filed March 25th, 1893, at 2:27 o'clock P. M.

33 And Defendant avers that said deed was then and there accepted by said Plaintiff.

And Defendant further avers that the property described in said deed was at the time of the executing and delivering of the same to Plaintiff as aforsaid of great value, to-wit, of the value of One Hundred Thousand Dollars.

And Defendant avers that said Belleville and St. Louis Railway Company was at the time of the making, executing and delivering of said deed by said Plaintiff and of the acceptance thereof by said Plaintiff as aforesaid indebted to divers persons in large sums of money, to-wit, in sums aggregating the sum of Ninety Thousand Dollars.

And Defendant avers that part of the indebtedness of said Railway Company was its indebtedness to the Defendant in the sum of to-wit, Sixty Five Thousand Dollars.

And Defendant avers that at the time of the making, executing delivering and accepting of said deed to and by said Plaintiff, said Plaintiff had notice of said indebtedness of said Railway Company and had full knowledge of the amount thereof. And Defendant avers that the consideration in said deed moving from said Plaintiff to said Railway Company, was the agreement and promise of said Plaintiff then and there entered into and made with the said Railway Company that said Plaintiff as consideration and payment for the property thereby to him conveyed would pay and satisfy the said indebtedness of the said Railway Company to said divers parties among whom was this defendant and that said Plaintiff in consideration thereof agreed and promised to pay to said Defendant within a reasonable time thereafter to elapse the said indebtedness of said Railway Company to this Defendant amounting to said sum of, to-wit, Sixty Five Thousand Dollars, which time has long since elapsed and Plaintiff has not paid said sum nor any part
34 thereof to the Defendant by means whereof Plaintiff has become liable to pay to said Defendant said sum of money, to-wit, Sixty-five Thousand Dollars, which said sum of Money so due from the Plaintiff to the Defendant as aforesaid exceeds the damages sustained by the Plaintiff by reason of the non-payment by the Defendant of the said several Judgments in said declaration mentioned and out of which said sum of money the defendant is ready and willing and hereby offers to set off and allow to the Plaintiff the full amount of the said damages, and this the Defendant is ready to verify wherefore he prays judgment &c.

By —— ——,
Attorneys for Defendant.

35 Be it remembered that on the 18th day of April, 1898, the following demurrer to the 4th plea of set-off was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, April Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And the Paintiff, as to the plea of set-off of the Defendant by him Fourthly above pleaded, says that the same, and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar him, the plaintiff, from having his aforesaid action, and that he is not bound by law to answer the same; and this he is ready to verify; Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment, and his damages, etc., to be adjudged to him, etc.

G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Pl'ff.

36 Be it remembered that on the 7th day of March, 1898, the following replication to plea of set-off of common counts was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now comes the said Plaintiff, by his attorney, and as to the plea of the said Defendant marked plea of set-off of common count, says that he did not promise and undertake in manner and form as the said Defendant in said plea of set-off has maintained, and of this he puts himself upon the country.

G. A. KOERNER &
VICTOR K. KOERNER,
Att'ys for Pl'ff.

37 Be it remembered that on the 4th day of June, 1898, the following replication to the special pleas of set-off was filed:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, April Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now again comes Plaintiff, and for replication to all of special pleas of set-off herein filed, the Plaintiff says that he did not become liable to pay to the said Defendant the sum of money in said pleas or any or either of them mentioned, in manner and form as is alleged in said pleas, and of this he puts himself upon the country. And the plaintiff doth the like.

DILL & WILDERMAN,
Att'ys for Pl'ff.

And for further replication to said special pleas of set-off filed by said defendant, plaintiff says he did not promise and undertake in manner and form as the said defendant has in said pleas alleged, and this he prays may be inquired of by the country.

By G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Pl'ff.

And the plaintiff doth the like by

DILL & WILDERMAN,
Att'ys for Pl'ff.

38 Be it remembered that on the 12th day of September, 1898, the following Additional replication to the 3rd. and 4th. pleas of set-off was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And for further replication to the third and fourth pleas of set-off filed by said defendant, the plaintiff says, that the defendant ought not to have an action to recover against him the said Plaintiff on matters in said pleas alleged because he says, that the said defendant heretofore, impleaded him the said plaintiff in an action in

assumpsit, begun in the name of the Belleville & St. Louis Railway Company, for the use of said Edward L. Thomas, said defendant in the said Circuit Court of St. Clair County, Illinois, to the April Term A. D. 1894, of said Court, in a certain plea of trespass on the case on promises, to the damage of the plaintiff of Sixty Thousand Dollars, for not performing the very same promises in said third and fourth plea of set-off mentioned, and such proceedings were therefore had that afterwards, at the same term by the consideration of said Court said cause was removed to the Circuit Court of the United States for the Southern District of Illinois, and afterwards, in said Court last named which then and there had jurisdiction of the persons and the subject matter, such proceedings were had that by the consideration of said Court the isues were found for the defendant in said cause (the plaintiff herein) and that he, said plaintiff herein, recovered his costs by him in his defense of said cause expended. And this the plaintiff is ready to verify.

By G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Pl'ff.

39 Be it remembered that on the 14th day of June, 1899, the following rejoinder to the additional replication to the 3rd and fourth pleas of set-off was filed:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now comes the said Defendant and for a rejoinder to plaintiff's additional replication to defendant's third and fourth pleas says *precludi non.* because he says, there is no record of the supposed proceedings in said replication mentioned remaining in the said Circuit Court of the United States for the Southern District of Illinois, and this the defendant prays may be inquired of by the Court.

A. S. WILDERMAN,
Att'y for Defendant.

40 Be it remembered that the following are true copies of the orders of the Court of the Jan. & Apr. Term 1898, in this case, to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 10th day of February, 1898, comes the parties by their respective Attorneys and the Court grants defendant leave to file additional pleas. On the 15th day of February, 1898, come again the parties by their respective Attorneys and plaintiff's demurrer to defendant's plea of set-off is by the Court overruled. And the Court grants plaintiff until March 7th 1898, to plead to defendant's plea of set off. On the first day of March 1898, the Court enters a rule on defendant to file a Bll of Particulars with his first plea of set-off by the 7th day of March, 1898. And now on the 25th day of March, 1898, the Court orders this case continued.

(Order of April Term, 1898.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 12th day of April, 1898, come the parties by their respective attorneys and the Court grants defendant time leave to file additional plea. On the 9th day of June, 1898, come again the parties by their respective Attorneys and plaintiff's demurrer to defendant's special pleas is argued by Counsel for the respective parties and is by the Court overruled and the Court enters a rule on plaintiff to reply to said plea by the 14th day of June, 1898, and now on the 15th day of January, 1898, the Court orders this case continued.

41 Be it remembered that the following are true copies of the orders of Court of the September Term 1898 and Jan. Term 1899 in this case to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 12th day of September 1898 come the parties by their respective Attorneys and the Court grants plaintiff leave to file additional replication. And now on the 2nd day of December 1898, come again the parties by their respective Attorneys and by consent of parties it is ordered by the Court that this cause be referred to L. D. Turner, Esq., as referee in this cause to hear

tesimony and report his conclusions of law and fact at the next term of this Court and it is further ordered by the Court that the defendant shall introduce all his testimony in support of his pleas by the 24th day of December, 1898, and that the plaintiff shall introduce all of his testimony by the 1st day of February 1899, and that the defendant shall introduce all his testimony in rebuttal by February 10th, 1899, and this cause is continued.

(Order of Court of January Term, 1899.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 14th day of February, 1899 come the parties by their respective Attorneys and the Court grant- the defendant leave to open depositions. And now on the 24th day of March, 1899, the Court orders this case continued.

42 Be it remembered that the following is a true copy of the Order of Court of the Apr. Term 1899, in this case, to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 14th day of June, A. D. 1899, come the parties by their respective Attorneys and on motion the Court grants defendant leave to file rejoinders to plaintiff's additional replications. And now on the 19th day of June, 1899, come again the parties by their respective Attorneys and enter into the following agreement to-wit:—

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court to the April Term, 1899.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

It is mutually agrred that an Order shall be entered by the Court directing the Referee in this cause to extend the time for taking evidence until September 1st, A. D. 1899, for the following

purposes. The Plaintiff shall have the right to produce a sworn statement of his accounts with the St. Louis, Belleville and Southern Railway Company and the Crown Coal and Tow Company before said Referee by August 10th A. D. 1899, That defendant shall have until September 1st, 1899, to cross examine plaintiff on said account and to produce evidence in rebuttal.

43 And the plaintiff to have until September 10th 1899, to introduce evidence in reply to defendant's evidence in rebuttal.

KOERNER, *For Plaintiff.*
DILL & WILDERMAN,
For Defendant.

Filed June 19th, 1899.

THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Illinois.

Whereupon the Court orders that this cause be continued as per above agreement.

44 Be it remembered that the following are true copies of the Orders of Court of the September Term, 1899 and Jan. Term 1900. in this case, to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the 25th day of October, 1899, the Court Orders this case continued.

(*Order of Jan. Term* 1900.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the 5th day of March A. D. 1900, the Court orders this case continued.

45 Be it remembered that the following is a true and correct copy of the Final Order of Court of the January Term 1900, in this case, to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 15th day of March A. D. 1900, come the parties by their respective Attorneys and on motion the order of continuance heretofore made in this case on the 5th day of March, A. D. 1900, and recorded in this book on page 498 is by the Court set aside and the folowing order entered.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1900.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on this 15th day of March A. D. 1900, come the parties to the said cause by their respective Attorneys and it appearing to the Court that the referee L. D. Turner desires to be relivd from further action in the cause and that the parties have agreed upon Marshall W. Weir, Esq., as referee in his stead; and that the referee desires to resign his office as such referee; and that the parties have agreed upon the provisions and limitations hereinafter expressed; it is ordered by the Court upon consent of both parties to said suit expressed in open Court that the resignation of L. D. Turner, Esq., the present referee in said cause, be accepted, and that he be discharged from any further duty as such; That Marshall W.
46 Weir be appointed referee in his stead; that the evidence already taken in said cause before the referee shall be considered as though taken before said Weir as referee; that plaintiff shall be permitted to submit an itemized account of his expenditures to the Referee, and be examined thereon, and to introduce evidence to substantiate the same, all of which must be done by April 15th, 1900, and that plaintiff shall submit himself to cross-examination before the referee by the defendant in St. Louis Missouri upon the items of the said account, when thereunto notified by the referee either personally or through his Attorney. After such cross-examination is made, the defendant shall have the right to introduce evidence with referee to any or all of the items of the said account and when this is done the evidence shall be closed and defendant shall have until May 10th 1900 to get his said evidence in. It is further ordered by consent of parties that the said Referee may take evidence in St. Louis, Missouri, and that three days' notice by said referee of the

time and place of taking evidence shall be regarded as sufficeint and legal notice.

G. A. KOERNER,
Att'y for Plaintiff.
DILL & WILDERMAN,
Att'ys for Def.

And thereupon the Court orders this case continued.

47 Be it rem-bered that the following are true copies of the Orders of Court of the April & Sept. Terms 1900 in this case to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the 8th day of June A. D. 1900, the Court orders this case continued.

(*Order of Court of Sept. Term,* 1900.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the third day of December A. D. 1900, the Court orders this cause continued, for the Report of the Referee.

48 Be it remembered that the following are true copies of the Orders of Court of the Jan., Sept. and April Terms 1901, in this case—to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 26th day of February A. D. 1901, the Court orders this case continued for the Report of the Referee.

(*Order of Court, Apr. Term*, 1901.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the 15th day of July A. D. 1901, the Court orders this case continued.

(*Order of Court, Sept. Term*, 1901.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

On the 18th day of December 1901, the Court orders this case continued.

49 Be it remembered that the following is a true and correct copy of the Order of Court of the January Term 1902, in this case to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 13th day of January A. D. 1902, comes Marshall W. Weir, the Referee in this case appointed at a former term of this Court and files his report in this case and by consent of parties it is ordered by the Court that this case be retained by the said Referee to consider any exceptions that may be presented to him, And it is ordered by the Court that all exceptions to said Referee's report be filed before said Referee by the 23rd day of January A. D. 1902, and it is further ordered by the Court that said Referee render his decision as to such Exceptions by the 24th day of February A. D. 1902. And now on the 24th day of February A. D. 1902, comes the said Referee and presents his report to the Court overruling the exceptions of the plaintiff to said Report which is ordered to be filed and presents his said report filed January 13th as and for his report in this cause. And now on the 25th day of February A. D. 1902, come the parties by their respective Attorneys and on motion of Plaintiff's Attorney the Court grants plaintiff leave to file and present the exceptions that were filed before the Referee.

And now on the 4th day of March A. D. 1902, come again the parties by their respective Attorneys and the defendant files his

motion for the Court to render judgment on the report of the Referee.

And now on the 4th day of April A. D. 1902, come again the parties by their respective Attorneys and this cause is heard by the Court as to the allowance of fees of Marshall W. Weir, the
50 Referee in this cause and the Court after hearing the evidence and arguments of Counsel and being fully advised in the premises orders that said Referee be allowed as fees in this case the sum of One Hundred and Fifty Dollars to be taxed as costs in this case by the Clerk of this Court and thereupon the Court orders this case continued.

51 Be it remembered that the following is a true and correct copy of the Order of the Court of the April Term 1902, in this case to-wit:—

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now on the 30th day of June A. D. 1902, come the parties by their respective Attorneys and plaintiff's exceptions which were filed to the Referee's report filed January 13th 1902 and by leave of Court re-filed and presented to the Court on February 24th 1902 is argued by Counsel for the respective parties and is by the Court overruled. To which ruling of the Court the plaintiff excepts and thereupon the Court approves the Report of the Referee filed January 13th 1902, and renders judgment on said Referee's report in favor of the defendant, Edward L. Thomas on his pleas of set-off and against the plaintiff, Samuel H. Leathe, for the sum of Seventy Thousand and fifty-eight Dollars and seventy-five cents ($70,058.75) as reported by the Referee on January 13th 1902.

And the further sum of One Thousand One Hundred and Sixty seven Dollars and sixty two cents being the amount of interests at 5 per cent. due on the amount found due by said Referee's report from February 24th 1902, to June 30th, 1902, making the total amount of the judgment Seventy one Thousand two hundred and twenty-six dollars and thirty seven cents ($71,226.37.)

It is therefore considered and adjudged by the Court that the defendant Edward L. Thomas have and recover of and from the said plaintiff Samuel H. Leathe, the said sum of Seventy One Thousand Two Hundred and Twenty Six Dollars and Thirty Seven Cents on his pleas of set off together with the costs of this suit and that the defendant have execution therefore.

52 To all of which ruling of the Court the plaintiff by his Counsel then and there excepts and prays an Appeal to the Appellate Court of Illinois in and for the 4th District which is allowed by the Court upon the plaintiff Samuel H. Leathe filing an Appeal bond in the penal sum of Eighty Five Thousand Dollars with security to be approved by the Clerk of this Court. Bond and Bill of Exceptions to be filed by the 15th day of August A. D. 1902.

53 Be it remembered that on the 4th day of August A. D. 1902, the following bill of exceptions was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, A. D. 1902.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Bill of Exceptions.

Be it remembered that on the 13th day of January, A. D. 1902, at the January term 1902 of said Court, the Referee, Marshall W. Weir, presented his report in words and figures as follows:—

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1902.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

The undersigned, to whom said cause was referred at a former term of this Court, with directions to take and hear all evidence offered by either party, and to report to the Court such evidence together with his findings of fact and conclusions of law, respectfully reports hat he has heard all the evidence offered by the respective parties, and caused the same to be reduced to writing,
54 and which evidence with the exhibits thereto, together with the evidence considered by the undersigned taken before L. D. Turner, Esq., the former Referee in said cause, he submits herewith to the Court.

This suit was commenced to the January term of this Court, A. D. 1898. The plaintiff declared in the usual form on two judgments obtained by him against the defendant in the Circuit Court of the City of St. Louis, Missouri—the first of date March 5th, 1896, for $2,278.63, and the other of date January 5th 1897, for $923.75.

The defendant does not question the regularity or validity of these judgments, but pleads matters of set-off largely in excess thereof, and insists on a judgment in his favor for the difference. Four pleas were filed: (1) Common Counts—money had and received, interest and account stated. (2) Special plea based on what is called the contract of Jan'y 24th 1893, and the proceedings of March 25th, 1893, (both of which will be explained later) and averring that

plaintiff sold the bonds mentioned in the contract for $500,000 and received the money therefore; that plaintiff had expended, to-wit: $300,000 in building the railway, and that was due defendant as per statement in the contract, to-wit, $70,000 which was to be paid defendant as in the contract specified and which plaintiff should have paid out of the $200,000. remaining in his hands.

(3.) Special plea based on the conveyance to plaintiff March 25th, 1893, from the Belleville and St. Louis Railway Company of a large tract of land for one dollar and other valuable considerations that the other valuable consideration was the promise of the plaintiff then and there made to pay the indebtedness of said Company then existing to diverse parties, including one to defendant of to wit, $60,000; that at the September term, 1893, of this Court defendant brought suit *against* the Company for the amount so due
55 him; that the Company notified plaintiff herein and he employed counsel and defended the suit, and defendant herein obtained judgment for $53,022.23, which judgment is still in full force and effect; sets up plaintiff's efforts to enjoin the prosecution of said suit, issues presented, the full hearing by the Court and dismissal of the bill.

(4th.) Special plea setting out the deed in *hæc verba* from the Belleville and St. Louis Railway Company to plaintiff of March 25th, '93. Avers that the property conveyed thereby was of the value to-wit: one hundred thousand dollars; that the Company at the time was indebted to divers persons in the sum, to-wit: of ninety thousand dollars including an indebtedness to defendant of to-wit: sixty five thousand dollars, of which indebtedness plaintiff had full notice; that the consideration of said deed was the promise of plaintiff then and there made to pay said indebtedness of the Company, including defendant's claim, within a reasonable time thereafter, which time has long since elapsed, and plaintiff has not paid said sum or any part thereof.

Findings of Fact.

In the Spring of 1889 defendant organized a railroad with a view of building a road from East St. Louis to Belleville with special reference to the coal fields lying near the bluffs. Later one Captain W. A. Adams became interested in the enterprise, and later still—in the fall of 1892—the matter was laid before the plaintiff Leathe. A statement was furnished him showing the amount that had been expended in the enterprise by defendant and others for which the Company was responsible. After an examination by plaintiff and an engineer employed by him he requested defendant to draw a contract embodying briefly the substance of their previous conversation on the subject. Defendant then drew the paper generally referred to as the agreement of Jan. 24th, '93, referred to in 2nd plea. This was signed by defendant Thomas and Bart S. Adams (son of Captain Adams, deceased) and handed to plaintiff
56 for his signature and the signature of Mr. Chipley, a promoter who was to be co-partner in the matter with plaintiff.

This instrument provided that Messrs. Leathe and Chipley were to put up funds to carry on the enterprise, and to negotiate $500,000 bonds of the Company; for a distribution of the capital stock of the Company; that each party was to receive back the amounts advanced to the enterprise as soon as the bonds were sold—Thomas and Adams the amounts as per statement rendered and Leathe the amount to be advanced by him and the balance to go into the treasury; and first proceeds of bonds to be applied to payment of amounts advanced by Leathe until satisfied. This contract was not signed at the time by Messrs. Leathe and Chipley, though still retained in the possession of Mr. Leathe. In the meantime the plaintiff purchased valuable properties as he claims in pursuance of the contract, but as defendant claims taking the titles in his own name, so that he would be working under the contract or not as he might subsequently elect. A few weeks later matters culminated in the agreement generally referred to as the agreement of March 25th, '93, referred to in the 2nd plea on the day the Belleville and St. Louis Railway Company conveyed to the plaintiff the property, rights of way, embankments, superstructures, etc., of the Company, "In consideration of one dollar and other valuable considerations from him to said Company moving," The same day as a part of the transaction he took an assignment of the stock transfer book of the Belleville City Railway Company 4995 shares of the capital stock of that Company; then for the stated sum of $499,500. he conveyed to the Belleville City Railway Company the said properties, which conveyance was accepted by the latter Company, as a full payment of One Hundred per cent. on his said share of stock in that Company. Thereafter the enterprise was conducted and the road finished under the charter and name of the Belleville City Railway Company. Plaintiff, Leathe, being the principal stockholder, and directing and managing its affairs generally. Bonds were issued in the sum of $500,000,
and later the bonds, stock and all were sold by plaintiff for
57 the sum of $500,000.

It is claimed by the plaintiff, substantially, that all he did in the premises was in pursuance of the agreement of January 24th; that the arrangement of March 25th imposed no additional burdens on him, but related wholly to organizing under the Belleville City Railway Company charter instead of continuing under that of the Belleville and St. Louis Railway Company.

While plaintiff have been acting with reference to the contract of Jan. 24th the evidence does not show conclusively that he was. It was not signed by him and Mr. Chipley until some time after the consummation of the arrangement of March 25th, and when it was signed by them Mr. Chipley swears Mr. Leathe suggested it would be well to forget the date of their signing it. And the matter of organizing under the Belleville City Railway charter involved, according to the evidence, more than simply the selection of a name. It was known to all concerned that the Belleville and St. Louis Railway Company had some indebtedness. It was also understood that the stock of the new organization was to be fully paid, and that the conveyance from Mr. Leathe to the new organization was to be ac-

cepted in full payment of his stock. In addition to this there is a clear preponderance of the testimony to the effect that plaintiff agreed as a consideration of the conveyance to him of the property and assessed — of the Belleville and St. Louis Railway Company to pay the debts of that Company, the amount of which debts the evidence shows he knew. After the 25th of March, 1893, defendant brought suit in this Court against the Belleville and St. Louis Railway Company to establish the amount of the Company's indebtedness to him. Mr. Leathe was notified to defend the suit if he wished so to do. He employed counsel and interposed a defense. The case was tried and judgment rendered for the defendant herein the sum of $53,022.23. That judgment is still in full force and effect and represents an indebtedness which the undersigned holds.

58 The evidence shows the plaintiff promised to pay as a part of the consideration of the deed to him of March 25th, 1893.

Conclusion of Law.

The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff for the amount of said judgment and interest thereon, less the amount of plaintiff's said judgments against defendant and interest thereon.

Defendant's judgment, Dec. 21st, 1893		$53,022.23
Int. to Jan. 11, 1902, 8 y'rs 20 days 5%		21,356.17
		$74,373.40
Deduct plaintiff's judgments:		
Judgm't Mar. 5th, '96	2,278.63	
Int. on 337.27 8% 5 y'rs 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgm't Jan. 5th, '97	923.75	
Int. 6% 5 y'rs 6 days	278.04	
		4,319.65
Balance		$70,058.75

for which judgment is recommended in favor of defendant Edward L. Thomas.

Respectfully submitted,

MARSHALL W. WEIR, *Referee.*

And on the 24th day of February 1902 he also presented the following exceptions to said report which had been filed before him by said plaintiff, and reported that he, the said referee, had overruled all said exceptions. The exceptions were refiled on the 17th day of January, 1902, and are in words and figures as follows:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1902.

59 SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

60 *Exceptions to Report of Referee.*

The said Plaintiff excepts to the finding and recommendation of the said Referee in this:—

1. The finding of the fact that the Plaintiff, Samuel H. Leathe, on the 25th day of March, 1893, or at any time promised to pay the indebtedness of the Belleville and St. Louis Railway Company to defendant, Edward L. Thomas to said Edward L. Thomas, is not supported by the evidence.

2. The evidence shows that the relations between the said plaintiff and defendant were all covered by the contract of January 24th 1893, and the Referee should have so found.

3. The Referee errs in finding that there is a preponderance of the testimony to the effect that the plaintiff agreed as a consideration for the conveyance to him of the property and assets of the Belleville & St. Louis Railway Company, to pay the debts of that Company. The evidence clearly shows that said conveyance to Leathe was merely formal,—no consideration passed—except nominal, and none was required, because said Leathe at once conveyed the same Property to the Belleville City Railway Company, the charter of which had been acquired, and under which the Railroad was to be built, instead of under the charter of the Belleville and St. Louis Railway Company. There is no evidence worthy of consideration to sustain the finding of the Referee, when applied to the admitted facts and conditions.

4. The finding of facts is incomplete, misleading and erroneous; draws attention to some occurrences relied upon to sustain them, leaving out the most important, as for example the Referee finds that on the 25th day of March, 1893, "the Belleville & St. Louis Railway Company conveyed to the plaintiff the property, rights of way, embankments, superstructures, etc., of the company, in consideration of one Dollar, and other valuable considerations
61 from him to said Company moving," and the same day as a part of the transaction he took an assignment on the stock transfer book of the Belleville City Railway Company 4,995 shares of the capital stock of that company; then for the stated sum of $499,500 he conveyed to the Belleville City Railway Company the said properties which conveyance was accepted by the latter Company as a full payment of one hundred per cent. on his said shares of stock in that company" without adding in explanation that Mr. Leathe received no consideration for such conveyance, and that he imme-

diately transferred the same stock to the defendant Thomas and others in exact accordance with the agreement of January 24th, 1893, which facts,—indisputably established—, indeed not questioned—would, if considered at all, have avoided the conclusion reached that a new promise or contract was made on that day, superseding the contract of January 24th.

5. The Referee failed to find that the claim made that Leathe absolutely promised to pay the debts of the Belleville and St. Louis Railway Company, has been adjudicated in favor of said Leathe, and against said Thomas as shown by the evidence.

6. The Referee errs in giving prominence to the fact that the agreement of January 24th, 1893, was not at the time signed by Mr. Leathe. The agreement to be valid did not require his signature; he acted upon it; purchased property which was of no avail except for the railroad and coal companies, and he had to take the deeds in his own name because the companies for which he bought them were not yet fully formed.

7. The plaintiff further excepts because the Referee failed to consider the amount which said Thomas has realized on said judgment recovered by him against the said Belleville and St. Louis Railway Company, which amount is cuqal to or in excess of the amount for which the said Referee recommended judgment in favor of the said Edward L. Thomas.

7. The Plaintiff further excepts because the said Referee
62 recommends judgment against the plaintiff for the sum of $70,058.75, and because the Referee failed to recommend that judgment be entered in favor of the plaintiff for the amount of the judgments upon which the suit is based with legal interest.

And therefore the said plaintiff, Samuel H. Leathe, prays that the said Referee may sustain these exceptions and report in favor of the judgments to which the plaintiff is entitled, on the judgments on which this suit is founded.

G. A. KOERNER,
Att'y for Samuel H. Leathe.

Thereupon the plaintiff, by his attorney, renewed said exceptions before this court, and again, on the 25th day of February, 1902, filed the same exceptions as above set forth.

The said Referee also filed the following evidence which was taken and heard by him, and this was all the evidence introduced or offered by either party.

And the same evidence and no other was heard by the Court on the hearing of the exceptions to the Référee's report.

(The said evidence is as follows:)

63 STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, to the January Term, A. D. 1899.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

The evidence of defendant, Edward L. Thomas, taken in the above cause, before L. D. Turner, Referee, at the office of said Referee in the City of Belleville, County of St. Clair, State of Illinois, commencing on Tuesday, the 20th day of December, 1898.

There were present: Mr. G. A. Koerner, representing the plaintiff and Mr. Edward L. Thomas, the defendant, appearing in his own behalf.

64 ALPHEUS BOLING, sworn for the defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Alpheus Boling.
Q. Where do you live?
A. I live in St. Clair Township.
Q. How long have you lived there?
A. Forty years.
Q. What is your age?
A. Seventy years old.
Q. Are you acquainted with the road known as the St. Louis and Belleville an- Southern Railroad, the road that was being built from East St. Louis to Belleville, under the charter of the Belleville and St. Louis Railway Company?
A. Yes, sir.
Q. What did you do with that, anything?
A. Well, I graded the road.
Q. Under whom?
A. Under Edward L. Thomas.
Q. Now, Mr. Boling, what connection did you have with that road otherwise?
A. Why, I was a stockholder in it.
Q. And a Director?
A. A Director.
Q. Do you remember how long you graded on that road before Mr. Leathe came into it, do you remember?
A. I think about two years and a half or about two years.
Q. Do you remember about the time Mr. Leathe came in?
65 A. Yes, sir.
Q. What time about was that?
A. That was in 1893.

Q. Were you present at any of the meetings held between all of the parties?

A. Yes, sir.

Q. Where was that meeting held?

A. It was held at Charlie Thomas' office.

Q. Do you know who was present there?

A. Well, Mr. Leathe and yourself and Mr. Needles, I believe was there and Charles Thomas, Johnny Taylor and Chipley and Mr. Holmes, their Lawyer, Mr. Holmes.

Q. Well was or was not Mr. Adams or myself there?

A. Yes, sir.

Q. Both of us were there?

A. Yes, sir.

Q. What do you remember about a deed that was made there by the Belleville and St. Louis Railway Company to Mr. Leathe, what do you know about that?

A. Well, as I understood it, Mr. Leathe had bought the road out from you and made a deed to the St. Louis and Belleville Road.

Q. To the Belleville and St. Louis Road?

A. To the Belleville and St. Louis Road.

Q. Well, was the name changed that day?

A. Yes, sir, they changed it.

Q. State what you recollect about that.

A. They changed it to the Belleville City Road.

Q. The Belleville City Railroad?

A. The Belleville City Road, yes, sir.

66 Q. That is, the name was changed?

A. Yes, sir, the name.

Q. Now, Mr. Boling, what was Mr. Leathe to do in consideration of that deed, if anything?

Objected to on the ground that the deed will show for itself.

Q. What, if anything, was the consideration?

A. I understood he was to finish up that road and put it in running order.

Q. Anything else?

A. And he was to pay off the indebtedness of the road, that is the way I understood.

Q. What road?

A. Of the Belleville and St. Louis Road.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Mr. Boling, who told you that he was to do that?

A. Why that was mentioned over there in the meeting.

Q. Who mentioned it?

A. Well, I guess several did. Edward L. Thomas was making a contract and it was spoken of, I think, how it was to be done and all about it, they were all satisfied with it.

Q. You say that Edward L. Thomas was making a contract with him there?

A. Yes.

Q. You were present when the contract was made?

67 A. Yes, sir.

Q. You heard what was said by Mr. Leathe in that matter, did you?

A. Yes, sir.

Q. What did Mr. Leathe say?

A. Mr. Leathe agreed to do——

Q. What did he say?

A. I could not use the exact language that he said, that I know of.

Q. Do you remember that he said anything?

A. Oh, yes, he had his talks. He said very little, he did not talk as much as the others did there, I do not think, but his lawyer and all looked over it.

Q. Did he have lawyers there?

A. Yes, sir, he had them there.

Q. What was his name?

A. Mr. Holmes, and he had the promoter there, Mr. Chipley.

Q. Did Mr. Holmes say anything about that?

A. Oh, yes, sir, he talked about that.

Q. What did Holmes say?

A. I do not know.

Q. You do not know what Holmes said?

A. I know they agreed there, they made the agreement there to take the road.

Q. Who do you know that from?

A. From Mr. Leathe, and I know they were all there together that had any interest in it.

Q. They all said so?

A. They all agreed to it.

Q. They all agreed to it?

A. Yes, Mr. Leathe would not take hold of the road, I think, unless it had been agreed to.

Q. Now, Mr. Boling, don't you know that Mr. Leathe was

68 to put in money to complete the road and sell the bonds and then pay himself first and then the debts of the road, was it not that way?

A. I understood he was to take all the bonds, that is the way I understood it, and finish that road in running order, and it was understood that he was to pay some out, to the best of my knowledge. He was to furnish some money, there was some debts to be paid and he was to settle the debts and all those things.

Q. Well, Mr. Holmes, he knew all about what was going on there, did he, he was there?

A. I guess he did.

Q. He took part in the talk too, did not he?

A. Yes, sir, sometimes, when anything was up, anything legal or something like that, yes, sir.

Q. Now, Mr. Boling, did not you know that Mr. Leathe had made

arrangements with Mr. Thomas and others, Adams for instance, prior to that time before that day?

A. Yes, sir, I know that.

Q. They had arrangements made?

A. Yes, sir, I knew that.

Q. You knew of those arrangements?

A. Yes, sir.

Q. And what that arrangement was?

A. Only what I heard from the parties outside.

Q. What parties?

A. Well, from Leathe and Edward Thomas.

Q. Well, now, what did Mr. Thomas tell you that the arrangement was that he made prior to that time?

A. He told me that he made arrangements for Leathe to buy out that road and build it and just what I said that he was to do, and in May he would have some money when the bonds would be signed and get the bonds then he would pay some.

Q. Who would have some money?

A. Mr. Leathe, he would pay.

69 Q. When Mr. Leathe got the bonds in his hands?

A. When the bonds had been signed, when they had been gotten up.

Q. Mr. Thomas told you that in May, 1893, Mr. Leathe would have some money to pay some——

A. He had money but would not want to pay until he got hold of these bonds.

Q. Was not Mr. Leathe to be repaid for the money he put in?

A. I suppose he thought he would get pay for it, he had the bonds.

Q. That was in the agreement?

A. Of course, he expected to get pay, I suppose for what he put in.

Q. Now, what you supposed, was that part of the agreement?

A. Well, yes, it would be natural enough to expect to get paid.

Q. I am not asking you what Leathe expected, you are talking about an agreement and I am asking you if that was part of the agreement, was it or was it not?

A. Well, I do not know, I would not think that he would——

Q. Now, there is no use of saying what you would not think, Mr. Boling, answer yes or no if that was the agreement?

A. Of course he was to be paid, I expect out of the bonds.

Q. He was to be paid out of the bonds?

A. That was all the pay he would have to get.

Q. He was to be paid out of the bonds first, was not he, before the old debts were to be paid?

A. Well, not as I know of. Leathe said so afterwards, but that was the understanding at first, that when he got hold of the bonds that he would be able to pay.

Q. Pay himself?

A. Not himself, no.

Q. Not himself?

A. No, nor not Ed. Thomas entirely, only some of these things that had to be settled.

Q. Now, then, he was not to pay himself and was not to pay Ed. Thomas but was to pay the things that had to be settled?

70 A. When the bonds would be on the road, when the road would be done and the bonds negotiated. When he had negotiated the bonds or sold them, he was to get his money, of course.

Q. He would get it first, would not he?

A. Yes, sir, but then what things were there which he said that he would pay——

Q. You are referring now to your claim, are you?

A. I do not know.

Q. You are referring to your claim in some things which had to be paid?

A. Yes, sir.

Q. That he was to furnish the money for?

A. There were debts that were standing.

Q. What were those debts?

A. I had something against him too. I expected to get a little out of it.

Q. Those debts were amongst others, the claim that you had for grading, or part of that?

A. Yes, sir.

Q. Some of that?

A. Yes, sir.

Q. You had a claim for grading?

A. Yes, sir. I did not expect to be paid out of anything, only lots of debts had to be paid.

Q. You expected then to get some part of that in May?

A. Yes, sir.

Q. In that way?

A. Yes, sir.

Q. That was agreed to at that meeting, was it?

A. I do not know that anything was said there; that was before this arrangement had been made, before that date.

Q. The words that were used either by Mr. Leathe or anybody else at that meeting, you will not undertake to repeat?

71 A. No, sir, not the exact language.

Q. Now, Mr. Boling, did you see Mr. Leathe, or did you ask him afterwards to pay this debt?

A. Yes, sir, I went to see him afterwards and he told me he had been slow in getting the bonds to him, I believe in getting them signed and made up, and there got to be a little squabble with other folks, with Mr. Adams and others, and I went down to see him, if I could not make an arrangement with him, somehow, and he said no, he said he would make no arrangement, he was not paying anything, he said, he didn't think yet.

Q. Did you make your claim then against him personally or against the Belleville City Railway Company?

A. Against the Belleville City Railway or against the St. Louis and Belleville.

Mr. THOMAS: The Belleville and St. Louis Railway Company?

A. The Belleville and St. Louis Railway.

Mr. KOERNER: Did you begin a suit against the Belleville City Railway Company to collect your claim?

A. Yes, sir.

Q. Did you sue Mr. Leathe for your claim?

A. I don't know, I think I sued him; I sued for a lien on the road.

A. A lien on the road?

A. Yes.

Q. Did you testify in a case in which one Charles Shedd sued Samuel H. Leathe and which was tried in the Circuit Court of St. Clair County before Judge Canby, did you testify in that case?

A. I do not recollect.

Q. You do not recollect?

A. No, sir.

Q. You say you do not remember whether you testified in that case or not?

A. No, sir.

72 Q. Now, then Mr. Boling, don't you recollect that you did testify in that case?

A. I think I did. I think I can recollect that now.

Q. Now, on that occasion, that is to say, in October, 1894, in the Circuit Court room of St. Clair County, when you were a witness in the case between Charles Shedd and Samuel H. Leathe, did you there state that you had sued Mr. Leathe for this money that you claim to be due you?

A. I do not know whether I did or not, I might have said it that I sued Leathe by not making a statement right, but I think I did not intend it that way, I intended to say I sued the St. Louis and Belleville Road.

Q. You sued the St. Louis and Belleville Road and the Belleville City Railway Company, was not that it?

A. I do not know anything about what I said then, but it was the intention that it was against the St. Louis and Belleville Road that I had sued.

Q. Well now then, without reference to what you said there, is it not the fact that you did bring your suit against the St. Louis and Belleville Railway and the Belleville City Railway, is not that the fact?

Mr. THOMAS: The record will show that.

A. I do not know.

Mr. KOERNER: You do not know anything about that?

A. No.

Q. Who did you claim was owing you this money, Mr. Leathe or the St. Louis and Belleville Railway?

A. The St. Louis and Belleville Railroad?

Mr. THOMAS: You say that the suit was for the purpose of a lien?

A. Yes, sir.

Q. When you went over to see Mr. Leathe, did you take
73 anybody with you the second time?

A. The second time I took my lawyer, Mr. Holder, over. I got word for me to — over.

CHARLES W. THOMAS, sworn for the defendant testified as follows:

Direct examination by Mr. EDWARD L. THOMAS:

Q. State your name, age, place of residence and occupation?

A. Charles W. Thomas, age fifty-eight years old, lawyer by profession and live in the City of Belleville, where I have lived for fifty-five years.

Q. Do you remember any enterprise of building a railroad in which Edward L. Thomas was engaged in 1890, 1891 and 1892?

A. I know that he was engaged in constructing a railroad known as the Belleville and St. Louis Railroad from the City of Belleville to East St. Louis.

Q. What was the first connection you had with that matter?

A. I had no interest in that enterprise at all, remotely or directly until some time in the early part of 1893. That interest arose in the following manner: I at that time owned or controlled the charter of the Belleville City Railway Company, passed through the Legislature in 1867. I owned almost all the stock except a few shares in the hands of my friends and accessible to me at any time. Mr. Edward L. Thomas some time early in February told me that——

Counsel for plaintiff object to witness stating conversations between himself and Mr. Edward L. Thomas.

(WITNESS continuing:) Well, it was my means of communication from him that I afterwards saw Mr. Leathe in reference to the
74 matter. Suffice it to say that some time in the latter part of February, 1893, I had visited Mr. Leathe in St. Louis in the office of Mr. L. M. Chipley, who was his financial agent or in some manner connected with him in the enterprise that he was in at that time. I took with me the charter of the Belleville City Railway Company and its record book.

The gentlemen there were myself, M-. L. M. Chipley, Mr. Leathe, Mr. Edward L. Thomas, Mr. Bart S. Adams and Mrs. John T. Taylor. Mr. Leathe desired to know and get information from me with reference to the charter of the Belleville City Railway Company. I read the charter to him, showed him the record book, explained to him how the charter had been kept alive, that it was still in force, and exhibited to him its advantages. He then said that he would not build the railroad unless this charter was procured. That he would not build under the limited franchises that were granted generally under which the Belleville and St. Louis Railway Company had been organized. We then talked over the manner in which that charter could be procured. I am not certain that in that conversation I developed the plan that was afterwards adopted, but several sug-

gestions were made, explaining upon what terms I would part with my ownership in that charter.

The whole matter culminated early in March, probably the middle of the month, there having been many conversations between myself and Mr. Leathe and Mr. Chipley in regard to the matter and between myself and Mr. Edward L. Thomas.

The plan agreed upon was, at my suggestion that Mr. Leathe should receive the stock of the Belleville City Railway Company and pay it up in full. I told Mr. Leathe on several occasions and Mr. Chipley and the others who were interested that I would not consent to part with that charter and remain liable to the creditors of the Company, as a stockholder; and that whatever stock I took in the matter must be absolutely and in good faith paid up in full.

75 The plan adopted was that Mr. Leathe was to purchase the right of way and the grading and the river front, connected with the Belleville and St. Louis Railway Company and was to turn them over by the deed to the Belleville City Railway Company, and was to agree to pay out its mortgage debt and to build its road and to protect it from foreclosure for one year after it was built. This contract appears on the record book of the Belleville City Railway Company and that was the culmination of all the negotiations that were had between the several parties interested in that enterprise.

In carrying that out, Mr. Leathe requested me to draw up a deed from the Belleville and St. Louis Railway Company to him of the properties and franchises that were included in that act—not franchises but properties.—I drew that deed up. Some time within five or six days before the 25th of March, 1893, Mr. Leathe desired, he said, to submit that deed to counsel and to consider the terms of it before the meeting which was to be held on the 25th of March. He took that deed with him and returned it, I do not remember just what time, but he returned it on the 25th of March, and that is the deed that is mentioned in the record of the Belleville City Railway Company as having been tendered by Mr. Leathe to the Board of Directors. The consideration of that deed where not expressed, was the payment by Mr. Leathe of all the debts of the Belleville and St. Louis Railway Company, in order to acquire the property and turn it over to the Belleville City Railway Company, free of all charges against it. Those debts he assumed. This was perfectly understood and frequently talked over and was one of the several plans that were suggested in order to make the payment of Mr. Leathe's stock full and complete, in the Belleville City Railway Company. Mr. Leathe after the stock was increased to five hundred thousand dollars took the stock from me except five shares, subject to a call which had been made upon it of one hundred per cent. That call he paid in the manner set forth in the records of the Belleville City Railway Company and by

76 virtue of the deed which he made from himself to the Belleville City Railway Company for the property he had acquired from the Belleville and St. Louis Railway Company and others.

Q. Was there anything said, Mr. Thomas, in any of those con-

versations regarding a supposed contract entered into on January 24th, 1893?

A. Yes, sir.

Q. What was that?

A. In the first interview that I had with Mr. Leathe and Mr. Chipley, Mr. Leathe went to a table drawer and drew out and exhibited to me a long statement, purporting to be and he told me it was, a statement of the expenditures made by Mr. Edward L. Thomas and Captain Adams in the construction of the Belleville and St. Louis Railway. He also showed me a contract.

Q. I will ask you if this is the contract in here that he showed you? If that is the contract and statement as there made (showing witness a book or pamphlet)?

Mr. KOERNER: What is that?

Mr. E. L. THOMAS: This is a certified copy of the chancery case in the State Court here.

Q. This contract dated January 24th, 1893, appearing on page 43 in the record of the chancery case, a copy of which I hold in my hands in the case of Samuel H. Leathe, the Belleville and St. Louis Railway Company and the Belleville City Railway Company, against Edward L. Thomas tried in the Circuit Court of St. Clair County at the January Term A. D. 1894, is that the contract or the supposed contract?

A. That is the contract or the supposed contract that Mr. Leathe showed to me. At that time it was not signed by Samuel H. Leathe or Lucien M. Chipley, but was signed by Edward L. Thomas and Bart S. Adams.

Q. Now, what was said in regard to that by you to Mr. Leathe, and what was done?

77 A. I told Mr. Leathe that under the circumstances, it did not seem to me that the contract was possible of execution. He asked me why not, and I told him that I had come into this matter now with the Belleville City Railway Company charter and that circumstances were entirely changed. That I was no party to that contract, would not be, and that if the deal was made with me as suggested, that contract would not be possible of execution. Mr. Leathe acquiesced with me in that; at the time the contract not then having been signed by him or Mr. Chipley.

Q. What was said in regard to that contract afterwards, as to its being in force or not?

A. Well, Mr. Leathe always contended to me up to—I will not state definitely what time—but long subsequent to that time that I was connected with the enterprise and after the 25th of March that he had not signed this contract and was not going to sign it. In fact in several conversations afterwards the contract was treated by Mr. Leathe and myself as having been partially abrogated. I won't say, I do not want to be understood as saying that the contract or the terms of it did not in some measure constitute a basis for the settlement that was made on the 25th of March, 1893, because it did.

Q. In other words, certain portions were retained in the new contract?

A. There were these elements of that proposition that entered into the arrangement and that was the indebtedness of the Belleville and St. Louis Railway Company which Mr. Leathe was to pay that entered into the new arrangement and the distribution of the stock of the new Company, the Belleville City Railway Company was based upon the distribution mentioned in that contract in a large measure, if not entirely. In other words, Mr. Edward L. Thomas got the stock in the Belleville City Railway Company that he was to get in the other enterprise, less the $25,000. which he was to give to me and which he did give to me or which I got by means of that agreement and which he lost.

78 Q. Did you ever have any conversation with Mr. Leathe immediately subsequent to the 24th day of March, concerning the consideration of this deed, of the Belleville and St. Louis Railway Company to him, if so, what was it?

A. I did.

Q. When was that?

A. I think it was the 29th day of March.

Q. Did you make a memorandum of anything that occurred at that time?

A. I did.

Q. Where is that memorandum?

A. I do not know, I have not it with me.

(Mr. E. L. Thomas thereupon produced a paper and handed it to the witness.)

WITNESS continuing: I hold in my hands a memorandum made by myself in my own handwriting, as this business progressed. There are other memoranda which I have not with me now showing this whole matter, which were written out before the meeting of March 25th, 1893.

Q. This was written on what date?

A. This was on the 29th day of March, 1893.

Q. What occurred on that day?

A. On that day Mr. Leathe and Mr. Bart Adams came into my office. They told me, Mr. Leathe told me and Mr. Adams acquiesced in it that they desired to settle the matter between Mr. Leathe and Mr. Bart Adams who was the representative or son of Captain W. A. Adams, who had been interested with Mr. Thomas in the building of the Belleville and St. Louis Road. His mother was Ellen Adams and Bart Adams was her son. Mr. Leathe told me that he desired to make notes to pay up or witnessing the amount of the indebtedness that he owed to Captain Adams' estate. There was an investigation then made by myself of which I have here a memorandum and in the presence of Mr. Leathe I entered this memorandum.

79 Q. Read the memorandum?

A. Consideration of R. R. deed $27,372.67 prin. & in. money advanced by Captain W. A. Adams.

Ellen.

Note to Ellen and Bart.

Leathe bought $8200. $100, shares int. March 1, 1893. $11000. One share of Bart's was also sold, making 83 shares.

That is the memorandum that I made there of the transaction which they proposed on that day to carry out. At the same time and on the same day I executed from Mr. Leathe the following contract or note to B. S. Adams, of which I took a copy on the same memorandum, "I agree to turn over to B. S. Adams, $11,000. first-mortgage bonds of the B. St. L. R. R. Co. as soon as same are issued in payment for his one-third interest in W. C. & Tow Co., meaning the Western Coal and Tow Company and the property thereof, March 29th, 1893." That instrument was signed by Mr. Leathe in my presence and delivered to Mr. Adams or something about that; this is a copy of what I had drawn out. The other instrument which they proposed to make Mr. Leathe proposed to make Mr. Adams in consideration of the Railroad deed as his share of the indebtedness, due from the Belleville and St. Louis Railway Company to the Adams estate was for some reason not executed that day. My present recollection is that Mr. Adams was not satisfied with the sum that Mr. Leathe put down here as the proper amount.

Counsel for defendant then gave the memorandum just referred to by witness in evidence.

(The said memorandum is marked Exhibit "A.")

Counsel for plaintiff objected to the introduction of the memorandum.

80 The followi[illegible]'s a true and correct copy of said memorandum:

Consideration of R. R. deed $27,372.67 prin & Int.

Money advanced by Capt. W. A. Adams.

Ellen—

Note to Ellen and Bart.

Leathe bought $8200. $100. shares int. March 1, 1893.
$11000.
One share of Barts was sold making 83 shares.

"I agree to turn over to B. S. Adams $11000. in first mortgage bonds of B. & St. L. R. R. Co. as soon as same are issued in payment of his 1/3 int. in W. C. & T. Co. and the property thereof. Mch. 29/93."

(O. A. K. Ex. A.)

Q. I believe all the memorandum- are made on this paper.

A. They are all made on that paper, it is some waste paper that I had, and I have made all of them on such paper, a great many of them, in connection with that transaction.

Q. What if anything was said during these different conversations had by you and Mr. Leathe regarding the bonds of the Belleville City Railway Company after they should be issued?

A. Nothing was said between me and Mr. Leathe respecting those bonds except what was said in order to arrive at the understanding which was subsequently put upon the records of the Belleville City Railway Company, nothing that I remember. Of course, there was a great deal of talk about the bonds, their issuance and all that sort of thing.

Q. That was afterward?

A. There was nothing at the time that I remember of unless my attention be called to some particular subject. I will state that there was a great deal, necessarily a great deal of negotiations and
81 talk extending over a great number of days between the parties to this arrangement and particularly between myself and Mr. Leathe, because Mr. Leathe relied upon me in a great measure to put in writing and shape the contract that he subsequently made in respect to the whole matter.

Q. That contract is the one that you spoke of as being——

A. It is on the records of the Belleville City Railway Company, signed by him at the foot of the resolution. I have reference to the resolution of March 25th, 1893, whatever it is.

Q. See if that is one?

(Handing witness the certified copy of the record in the chancery case heretofore identified.)

A. They begin on the 57th page of the record, formerly mentioned and marked Exhibit "D" and they continue over pages 57 and 58 of that record.

Q. What was said if anything, by Mr. Leathe at that time or about that time about the disposition that he intended to make of these bonds?

A. He said he intended to take them himself; he had plenty of money and he was going to take them himself.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. You knew that prior to the 25th day of March Mr. Leathe and Mr. Edward L. Thomas had some arrangement in regard to the Belleville and St. Louis Railway Company?

A. I knew that, just what I have stated that this proposal of January 24 was in Mr. Leathe's possession. I do not think that I know anything more than that, except Mr. Leathe had examined the property and had talked a great deal about going into the enterprise.

82 Q. Mr. Edward L. Thomas is your brother?

A. Yes, sir.

Q. Do you know in what month the fact that the charter called the Charter of the Belleville City Railway Company which you have spoken of was in existence, came to the knowledge of Mr. Leathe?

A. I know what Mr. Leathe told me about it. He told me my

brother had called his attention and told him that it was a very good franchise.

Q. Your brother had told him?

A. Yes, sir.

Q. Did he tell you that your brother wanted to adopt it in the construction of this road?

A. No, I believe that he told me my brother did not want to adopt it.

Q. But he told him it was a good thing to have?

A. Yes, sir, my brother, I believe, did not want to give up $25,000 to get it, although it was a good thing to have. It was not good enough for the price.

Q. When did you first see Mr. Leathe?

A. When did I first see him?

Q. Yes.

A. I first saw Mr. Leathe between the 12th and 13th of February and the 23rd.

Q. Of that year?

A. As near as I can recollect, yes, sir. I do not think that I had any communication with Mr. Leathe with respect to this business over six weeks before it was finally determined, in fact, I did not know him at all.

Q. When did the communication between you and Mr. Leathe have its inception?

A. The first I heard of it as I started to tell, when you objected, was that my brother asked me for a written proposition upon the ground that Mr. Leathe wanted this charter and I made him
83 one to take to Mr. Leathe and after that was done Mr. Leathe sent me word by him that he wanted to see me and made an appointment at Mr. Chipley's office, which I kept.

Q. Had you seen Mr. Chipley prior to that time?

A. Not prior to that time, not that I remember.

Q. Did you tell Mr. Chipley that this charter had superior advantages and ought to be adopted in this enterprise?

A. I explained to them the advantages and read them the charter and explained to them that it was a perpetual grant and that it had certain rights of way. I further showed them certain copies of an ordidnance of the City of Belleville, and the then Town of West Belleville, giving it a right of way over all public streets in those towns which was a valid ordinance, and Mr. Leathe, subsequent to the arrangement, proceeded to go so far as to get ties and put them on the street for the purpose of taking advantage of that ordinance, he thought it was a very good grant.

Q. Then the first time, I understand you that you saw Mr. Chipley in connection with this matter was when you met him in Mr. Leathe's office?

A. I think that is it, I am not positive about that, I may have seen him. Mr. Chipley might have been over here to see me about it, but I have no recollection of seeing him upon that business before that date.

Q. Were you acquainted with Mr. Chipley before that time?

A. No, sir, I never met him until this came up.

Q. Then as I understand you, the way this matter first came up was by Mr. Edward L. Thomas proposing to take this charter?

A. The matter came up, as I have stated by Mr. Edward L. Thomas asking me what I would take to part with the charter and I told him I would take $25,000 of paid up stock in the enterprise.

Q. Now, Mr. Thomas, such being the case now that Mr. Leathe and Mr. Edward L. Thomas being interested in the St. Louis and Belleville Railway and desiring to use the charter of the
84 Belleville City Railway Company for the purpose of constructiong their Railroad instead of the charter of the Belleville & St. Louis Railroad was it not necessary that the property of the Belleville and St. Louis Railway should be transferred to the new corporation?

A. It was not necessary, no, sir, it was not necessary because at that time Mr. Leathe had no interest whatever in the Belleville and St. Louis Railroad, he had not put anything into it. There was nothing with him but the proposition unsigned, and he had not put money into to it that I knew of at that time; I think in fact he had refused to up to that time.

Q. Don't you know, Mr. Thomas, that Mr. Leathe at that time had amongst other things purchased a lot on the river front?

A. Yes, he purchased that in his own name, yes, sir, he bought some property in his own name. He was very careful to take it in his own name.

Q. Don't you know that it was for the railroad purpose?

A. Well, I suppose that it was, but I knew very well that he did not mean to turn it over unless he built the railroad.

Q. Don't you know that he had expended other moneys provided for in that contract at that time?

A. No, sir, not without taking securities for them in some shape.

Q. He had done so?

A. I do not know that he had, no, sir.

Q. You do not know that he had?

A. No, sir.

Q. Do you mean to state then, that Mr. Leathe at that time had made no investment, incurred no obligations in consequence of his contract with Mr. Edward L. Thomas?

A. I do not mean to state that, but I mean to state that Mr. Leathe was at that time in a position where he could back out of that concern without the slightest loss, that is what I mean to say.
85 Q. Don't you know that Mr. Leathe then had advanced the amount necessary to take up four bonds then held by Mr. Johnson, two thousand dollars with interest and at the Third National Bank $750. with interest at St. Louis?

A. I heard he had, and heard he had taken notes to secure himself too for that.

Q. Was not that the arrangement that he should advance the money?

A. It was not advanced, no, sir, it was lent, and he got a note for it, he did not advance it. Mr. Leathe told me himself that he

was not in this enterprise and would not go into it unless the charter of the Belleville City Railway Company was procured.

Q. You have stated that. So you do not think that in case Mr. Leathe and Mr. Thomas desired to proceed in the construction of that Railroad under the charter of the Belleville City Railway Company and obtain the property of the Belleville and St. Louis Railway Company, that it was necessary to make a deed to pass it to that latter Company?

A. I do not understand you.

Q. So you do not think that in case Mr. Leathe and Mr. Thomas desired to proceed in the construction of that Railroad, under the charter of the Belleville City Railway Company, and obtain the property of the Belleville & St. Louis Ry. Co., that it was necessary to make a deed to pass it to that latter Company?

A. Why, it certainly was necessary to procure that property before they could use it in building under another charter, that is a sure thing.

Q. And in carrying that out, a deed was made from the Belleville and St. Louis Railway Company to Mr. Leathe and from Mr. Leathe to the Belleville City Railway Company, was it not?

A. Yes, sir, there were.

Q. You had prepared those deeds?

A. I had.

Q. Prior to the meeting?

A. I had.

86 Q. They were both there at the time and were signed at the same time, substantially?

A. I think they were, I am not going to be certain about it. They were both there, though. Mr. Leathe had them in his possession at the time of the meeting and they were both read and were lying there.

Q. The description at that time of the meeting, the recitals in the record of the Belleville City Railway Company are absolutely true with reference to what took place there, so far as it goes. There were certain considerations stated in that deed, why were they not all stated in the ded?

A. The consideration of the payment of the debts in the Belleville and St. Louis Railway Company was not put in the deed at Mr. Leathe's request, because he said investors looking after the bonds of the Belleville City Railway Company might become frightened at the indebtedness of the Belleville and St. Louis Railway Company, over whose land the Belleville City Railway Company was going to build its road, and he wanted that left out. There were the words "other valuable considerations from him to it moving" that was put in in the place of it.

Q. You were then a counsellor at law, were you not?

A. Yes, I was then a lawyer.

Q. Mr. Leathe was not?

A. Mr. Leathe was not a lawyer, no, sir.

Q. You said that Mr. Leathe had a great deal of confidence in your carrying out that matter?

A. Well, I won't say he had any confidence, but he never displayed any lack of confidence in me until after that, and I do not think I ever did anything to justify the lack of confidence afterwards displayed. There was nothing done about this matter at all between Mr. Leathe and me, it was all determined by his lawyer who was there.

87 Q. You knew that Mr. Leathe had made or had received, I will say this what I call a contract that you have introduced in connection with your testimony, you knew of the existence of that contract?

A. I knew that Mr. Leathe had it, because the first day that I ever saw him, he showed it to me and I read it and it was not signed, that is, it was signed by two parties.

Q. Now, Mr. Thomas, after you had signed, as I understood you to say that you did, to Mr. Leathe the stock of the Belleville City Railway Company, is it not true that he immediately assigned forty-nine per cent. of it to other parties in the manner and in the proportion determined by this contract of January 24th?

A. I stated that the contract in that respect and probably in one other that I mentioned formed the basis of the new contract, and the subdivision of the stock was one of those with the exception that Mr. Edward L. Thomas did not get the amount of stock that was provided for in that proposition of January 24th, but I got $25,000 of it and he got the balance.

Q. In other words, he turned over that much to you for the privilege of using that charter?

A. That is what I got that stock for, and it came from Mr. Edward L. Thomas' part, in this manner; of course the records do not show that, the records only show that Mr. Leathe assigned to me fully paid up stock.

Q. Now, Mr. Thomas, You are aware, may be, by looking at it, that the contract of January 24th, 1893, provided also that Mr. Leathe was to pay the amounts that Mr. Thomas and Mr. Adams had expended and had become liable for in the work thay had done on the Belleville and St. Louis Railway?

A. I think there is some such provision in it, I do not now recollect the term of it.

Q. And that that was to be paid subsequent to Mr. Leathe repaying the money which he had advanced for completing the railroad?

88 A. There is something like that in the proposition.

Q. You knew that?

A. I had read it at that time. I want to state that my mind is not clear as to its terms, but I knew it at that time.

Q. You knew what it contained?

A. I knew what it contained and was acquainted with its contents.

Q. What was the consideration paid to Mr. Leathe, if any, for the stock which he issued to all the parties, which he assigned to all parties except that to you of which you have given the consideration?

A. Do you mean the consideration which moved to Mr. Leathe for the distribution of the stock?

Q. Yes, sir.

A. I do not know what the consideration was. I was only interested in my own stock. I do not know what the consideration was in the others. I know he never stated to me what the consideration was. It was all part of one general plan, he was to pay up the stock and distribute it.

Q. You wrote the transfer of the stock yourself, did not you?

A. On the books?

Q. On the books?

A. I think I did and Mr. Leathe signed them.

Q. Mr. Leathe signed them?

A. He did, yes, sir.

Q. You had that all prepared before he reached your office on that day, had you not?

A. Well, I am not so certain of that, no, I do not think I had. I had it prepared in the memorandum which I have mentioned, the general form of resolutions that were adopted that day, but some change was made in one of them that Mr. Leathe's lawyer suggested, and that change was adopted.

Q. What one of Mr. Leathe's lawyers?

89 A. Mr. Holmes represented him.

Q. Mr. Holmes was representing Mr. Leathe?

A. He frequently consulted with him, I do not know whether he was representing him.

Q. Was not Mr. Holmes attorney for the Adams estate?

A. Yes, they all had about the same interest on that; there was no difference between us on that day at all. Mr. Holmes is the man who suggested the change in one of those resolutions.

Q. On one other occasion you said this about this matter: "The deed was drawn up for one dollar and other considerations, the deed from the Belleville and St. Louis Railway Company to Mr. Leathe, that was one dollar and other considerations. Before that deed was brought up, I in conversation with Mr. Leathe, in Mr. Chipley's office, more than three or four times, explained to him the method whereby this stock could be paid up, that he must purchase this property from the Belleville and St. Louis Railway Company and to pay its debts of which he had a list and he agreed to that and said 'That is all right' and I wrote it out and we met in my office and we signed all except the arrangement to pay the debts."

A. That is substantially correct, yes, sir. Part of it might have been amplified a little, but that is about the substance of it.

Q. Now, on the 25th day of March, when you were there, were those papers simply signed in conformity with what you understood to be the arrangement prior thereto or was the matter talked over again?

A. We were on the 25th day of March from half after nine in the morning until half after five in the evening, with an intermission of about an hour, altogether, considering this matter in every phase and talking over every single element of it and all the parties in in-

terest were present and there was no misunderstanding in the mind of any man as to what was meant.

Q. Was Mr. John M. Holmes present?

A. Mr. John M. Holmes was present and Mr. John M. Holmes knows as well as any other man what took place.

90 Q. He will state what he knows about it?

A. Yes.

Q. Mr. John T. Taylor was present?

A. Mr. John T. Taylor was present.

Q. He knew all about it, did he?

A. Well, Mr. Taylor might have known all about it, he was on the ground, that is, he could hear it, but it was a sort of complicated matter and Mr. Taylor might not fully have understood or Mr. Boling, and maybe one or two others that did not grasp the whole scheme, they were not accustomed to that sort of business.

Q. Was anything said about when he was to pay the debts, or when he was to get his money back that he should put in the enterprise?

A. There was nothing said about it, Mr. Koerner, except what appears in the contract there at the time.

Q. Then, as I understand you, the substance of that agreement are partly in the minutes of the Company and in the deed and are partly parol? Mr. Leathe was to pay the debt and to build the road and one-half of the stock to other people, and not to make any payments to himself?

A. He had the fund out of which to pay it.

Q. What fund was that?

A. The bonds of the Belleville City Railway Company.

Q. He was not to pay until the bonds were floated, was not that it?

A. There was nothing said about floating the bonds, he said he was going to keep them himself.

Q. He said he was going to keep them?

A. Yes, sir.

Q. Do you say that positively?

A. He did more than on one occasion. You probably overlooked, Mr. Koerner, this consideration might be in reply to some of your questions, that the contract contains the clause that he was to pay the indebtedness of this Company with those bonds of the Belleville City Railway Company; one of the indebtedness of this

91 Company was the consideration of the deed from him to it and that meant the indebtedness which had been assumed by him to pay the debts of the old Belleville and St. Louis Railway Company.

Q. When was he to pay?

A. Why, after he had sold the bonds, or after he had utilized them.

Mr. E. L. THOMAS: He was to sell them or take them.

Mr. KOERNER: Was it put into the contract that if he took the bonds he was to take them at par?

A. I cannot be positive, but I so recollect it, yes, sir.

Q. So, then, before the bonds were issued and so forth, there was no liability for him to pay this?

A. Well, I do not think he would, if you want my personal judgment as a lawyer. He was under no liability to pay the debts until he got the bonds because that contract says that he shall pay the debts of this Company with those bonds and one of the debts of this Company was a debt to him for the property that he had conveyed to it.

Q. Now, when he and Mr. Adams appeared in your office on the 29th day of March, as you state they did, was that for the purpose of arriving at an agreement or understanding as to the amount that Mr. Adams or the estate in which he was interested had in this enterprise?

A. Yes, sir. They were arriving at an agreement; they were to carry out the contract that Mr. Leathe had made to pay the debts of the Belleville and St. Louis Railway Company by taking Mr. Leathe's note for that amount, that had been expended by Captain Adams. That was one of the purposes, the other purpose was to buy the tugs and other material that the Western Coal and Tow Company conveyed to Mr. Leathe.

92 Q. That note which was to be made you state you made one note for $11,000, there, that was in the same manner?

A. Well, no, not in the same manner. The purpose for which they came to me was that I could draw a note which would witness the amount that Mr. Leathe owed, on account of the consideration of that Railroad deed to the Adams estate.

Q. That was to be paid in bonds, was it, like the other?

A. I do not know, but I will not say it was not, because it is possible that it might have been the understanding. My recollection is that it was to be paid in bonds.

Mr. E. L. THOMAS: The same as the other note?

A. Yes, sir.

Q. That was the arrangement between Adams and Mr. Leathe?

A. Yes, sir, that is my recollection, no money but bonds.

Mr. KOERNER: Now did you know anything about the Crown Coal and Tow Company's connection with this enterprise?

A. Well, I knew something of it, yes, sir. I was interested in that but was not so familiar with that as I was with the railroad matter because I had no interest in the Crown Coal Company before this deed was made.

Q. But in this deal you got an interest in it, did you not?

A. I did.

Q. Explain now what interest you got in that and for what consideration?

A. I think the only interest to me was that I was to have the same proportion in the coal company which was an adjunct of the railroad, that I had in the railroad company, to the extent of three fifths, as they all did, that the capital stock of the coal company bore to the capital stock of the railroad company. That was one of the considerations for which I assigned my stock in the railroad company.

Q. Then the consideration for assigning that stock was that you should have twenty-five thousand dollars worth of stock in the

93 Belleville City Railway Company and ten thousand in the Crown Coal and Tow Company?

A. Yes, sir.

Q. Was the Crown Coal and Tow Company a corporation which was formed as an adjunct, if you please, to the Belleville City Railway Company?

A. I do not think originally it was formed as such, but it became such by the understanding of the parties at this time to purchase new coal lands on the opening of the new road.

Q. It did not become such by virtue of the contract of January 24th, 1893?

A. Not that I know of, no, sir, because I had nothing to do with the contract of January 24th, and the proposition of January 24th, had nothing to do with the Crown Coal and Tow Company.

Q. Your interest in the Crown Coal and Tow Company also lessened Mr. Edward L. Thomas' proportion of the stock in that?

A. Yes, sir.

Q. And that was on the same day, I believe that you had met there on the 25th of March, 1893, that was also assigned by Mr. Leathe?

A. I think there was some proceedings with reference to the payment of that, although my recollection is not clear. The records will disclose that. I did not take a very great interest in the Crown Coal and Tow Company matter, because I did not regard it as of much importance.

Q. Did you know at that time that Mr. Leathe had invested considerable money in the Crown Coal and Tow Company?

A. No, sir, I did not; not in such a way that he did not have a string to it and could pull it back.

Q. You did not know that he had purchased considerable coal lands?

A. I did not at that time.

Q. Did you prepare a deed of those coal lands at the same time to the Crown Coal and Tow Company?

94 A. I may have, I could not remember, from the Crown Coal and Tow Company to Mr. Leathe?

Q. From Mr. Leathe to the Crown Coal and Tow Company?

A. Probably that was the same sort of an arrangement to pay up its stock which was reported to in the other.

Q. You did not know, then, that he had invested considerable money?

A. Yes, in his own name, of course, I say he had a string to it. It was all in his own name and he had a string to it.

Q. Did you know that those lands which he had purchased were dependent for their immediate value upon the construction of the railroad?

A. They certainly were in a great measure.

Q. Did you not know also that Mr. Leathe had invested a good deal of money, say twenty or thirty thousand dollars or more in purchasing boats and barges for the Crown Coal and Tow Company's business?

A. No, I do not think he bought those barges until—he might have bought them, but he did not buy all of them until subsequently,

that is, he did not make any payment for them, I do not know when it was arranged. I never knew exactly how he got them or when he got them, but my understanding was that Mr. Leathe made all those purchases in his own name.

Q. Certainly, there is no doubt about that?

A. He did not risk any money in this enterprise whatever.

Q. You considered it no risk then, buying coal lands?

A. No, not at all, they were worth what he paid for them.

Q. Provided the railroad was built?

A. Yes, that was so far gone, it had to be built by somebody.

95 *Re-examination.*

Re-examination by Mr. EDWARD L. THOMAS:

Q. You have been talking about this stock of the Crown Coal and Tow Company, now, look at this instrument on page 137 of the record marked Exhibit "D" and see what that is?

A. This is an instrument signed by me, dated February 17th 1893, and appearing on page 137 of this record in the St. Clair Circuit Court. That was a proposition made by me to Mr. Edward L. Thomas, made in writing so that he could show it to Mr. Leathe as to what I was willing to do.

Q. That was the proposition?

A. That was the proposition I made, and stated that I would expect a like interest in any collateral enterprise.

Mr. KOERNER: This part where you speak of all enterprise undertaken in connection with it, that is in connection with the Belleville and St. Louis Railway Company, did that refer to this?

A. That referred to the Crown Coal and Tow Company.

96 HENRY M. NEEDLES, sworn for the defendant testified as follows:

Direct examination by Mr. EDWARD L. THOMAS:

Q. State your name?

A. Henry M. Needles.

Q. Where do you live?

A. Belleville, Illinois.

Q. How old are you?

A. Forty-five years old.

Q. What connection did you have with the Belleville and St. Louis Railway Company?

A. I was secretary of the Belleville and St. Louis Railway Company.

Q. Do you remember the time, or have you any records of your company pertaining to this suit?

(Handing witness a paper.)

A. Yes, sir, I do.

Q. Now, what was done by the Company in reference to the suit of Edward L. Thomas against the Belleville and St. Louis Railway Company?

Mr. TURNER (the referee): What have you there?

A. I have the record of the Belleville and St. Louis Railway Company.

Q. Who was it kept by?

A. It was kept by myself.

Q. As secretary?

A. As secretary.

Q. Now, what proceedings were there on September 8th, relating to that suit? That's the only thing that I care for.

A. On the 8th day of September, 1893, a meeting of the Board of Directors of the Belleville and St. Louis Railway Company was held, and a resolution was offered and passed by the Board directing the secretary of the Company to notify Samuel H. Leathe of the bringing of said suit.

97 Q. What suit did that refer to?

A. That was the suit of Edward L. Thomas against the Belleville & St. Louis Railway Company for the amount they owed you for building the road up to that time.

Q. Now, then, what took place, what did you do?

A. We passed the resolution and in pursuance of the resolution, on the same day of the following day, I went and served written notice upon Mr. Samuel H. Leathe in pursuance of this resolution, notifying him to defend, if he desired so to do.

Q. What part or what did the Company do in regard to that suit, who defended it?

A. Why I do not remember whether he defended it or not.

Q. Did the Belleville and St. Louis Railway Company defend?

A. Yes, sir.

Q. You say it did, the Belleville and St. Louis Railway Company?

A. I think so, the record will show, I do not remember about that.

Q. You do not remember about that?

A. I could not tell without refreshing my recollection, I could find out, but there have been so many of these suits that I do not remember all about them.

Q. Well, now, Mr. Needles, I think that is all I care to ask you on that question. Now, you were present at the meeting of the Company on March 25th, 1893?

A. I was.

Q. Where did that meeting take place?

A. In the office of Mr. Charles W. Thomas in this City.

Q. Who was present?

A. Mr. C. W. Thomas, Mr. Leathe, Mr. Taylor, Mr. E. L. Thomas, Mr. Adams, Mr. Holmes, the attorney for Adams and Leathe, and Mr. Boling, all parties interested were there who held stock in the Belleville and St. Louis Railway Company.

98 Q. Was Mr. Waddock there?

A. Mr. Waddock was there and Samuel Leathe, Jr.

Q. Now, do you remember the conveyance that was made or whether there was a conveyance made as shown by the records of the Company on that day? by Mr. Leathe to this Company?

A. Yes, sir.

Q. Is that the record of it?

A. Yes, sir, I have a record of the transaction. We held a meeting the Directors and Stockholders of the Belleville and St. Louis Railway Company, we held a meeting at the same time and place?

Q. What was the result? Just read that.

A. We passed a resolution.

Q. Just read that?

Mr. TURNER: You have got it in the record already, have not you?

Mr. THOMAS: I do not think that is in the record. This is the Belleville and St. Louis Railway Company.

Witness then read the proceedings of said meeting, which were as follows, to-wit:

Appearing on page 148 & 149 of printed record of chancery proceedings in case of Samuel H. Leathe *vs.* Edward L. Thomas *et al.*

Q. Did all of the stockholders consent to that?

A. All the stockholders consented.

Mr. KOERNER: Mr. Leathe was not a party to that, was he?

Mr. THOMAS: I will show you what he had to do with it.

Q. The stockholders were all there and they agreed to that?

A. Yes, sir.

Q. Who were the stockholders at that time?

A. Bart S. Adams, Henry M. Needles, John T. Taylor, Alpheus Boling, Edward L. Thomas and Josephine Johnson.

99 Counsel for plaintiff objected to the introduction of the proceedings of the meeting read by witness and appearing on the preceeding page.

Q. Well now, what took place in regard to that deed at that time, what was done concerning it?

A. Well I only know generally, I was not as well informed as the other parties who were present most of the time. I think at one time I left the room, but I was there most of the day. I heard Mr. Thomas' testimony in this case and my recollection is substantially as his is. They said a good deal about this deed, yes, sir.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Is your memory better now on that subject than it was in October, 1894?

A. Yes, sir, it is. I testified in reference to this matter once before, and I stated that I was not very positive about it. Since then I saw certain documents which refreshed my memory so that I can state positively about the matter.

Q. Were you a witness in the case of Charles Shedd against Samuel H. Leathe and did you testify in that case in October, 1894?

A. I did.

Q. In the court room at Belleville, Illinois?

A. I did.

Q. Were you asked this question, "Were you present in the office

of Charles W. Thomas, in this City on the 25th day of March, 1893, at the time this contract was made between Mr. Leathe and the Belleville and St. Louis Railway Company, that he was to take a conveyance to himself of the property of that Company and pay the debts of that Company?" And did you answer "I was there a little
100 while, I think only in the morning, that is my recollection?"

A. Yes, sir, that was my statement then.

Q. Was that statement true?

A. Substantially. As I stated a while ago, I did not recollect at the time positively about the matter, but since then——

Q. You stated there that you were present only a little while in the morning, is that true?

A. Well I was there longer, I was there most of the morning. I stepped out once or twice and I was there in the afternoon pretty near all the time.

Q. Why is it, Mr. Needles, that four years ago you stated you were there only a little while in the morning and now, four years thereafter, you state you were there most of the time?

A. Well, I can state that I made an affidavit, a very short time after this meeting was held, with reference to these facts, as to what occurred at that meeting and since I testified in that case I have seen the affidavit, which was made, as I say, within a few weeks after the meeting occurred and I have refreshed my memory.

Q. Where is that affidavit?

A. I can get it for you if you want it, this afternoon.

Q. You did not have it at that time?

A. No, I did not have it at that time.

Q. What was the purpose of making the affidavit?

A. I do not recollect why it was made, I had forgotten about it at that time that I made the affidavit, or why; I do not know what it was made for or what it was used for. I have been called as witness so often in this litigation that I do not know what these things are for, half of them.

Q. Did you say on the occasion that I have referred to "Well, I have heard so much of this matter that my recollection is not very clear. I was there only a little while in the morning and I believe I left before Mr. Leathe came there with the deeds and
101 whether Mr. Leathe said anything at the time I was there or not I do not know?"

A. I say that I suppose I did at the time. There has been a great deal of talk and litigation and I became considerably confused in the matter.

Q. There has been more since, has there not?

A. Well, not that I have been concerned in so much.

Q. You yourself brought suit against Mr. Leathe?

A. Yes, sir, I have.

Q. Are you not engaged in litigation with him now?

A. I am, yes, sir, unfortunately.

Q. Were you not asked on that occasion, this question Now, state what was said?" and did you not make this answer "I don't know

what was said. I was only there a little while and I was not there in the afternoon, when the thing was consummated."

A. I said that, yes, I did not recollect what was said; a great deal was said on that occasion and I do not think anybody else does either.

Q. Were you present that afternoon?

A. I won't be positive about that, I don't recollect.

Q. Did you not state on that occasion and at the time referred to heretofore that you were not present in the afternoon?

A. I may have stated that.

Q. That you were only there a short time in the morning?

A. I have stated that I do not recollect.

Q. Did you say on that occasion and at that time "Well, Mr. Charles W. Thomas had the papers prepared and Mr. Leathe, while I was there has very little to say; there was not much discussion; he accepted everything that was done there while I was there, but I do not believe any papers were signed until after I had left."

A. My recollection is that Mr. Leathe had very little to say. He submitted matters to Mr. Holmes and they were read over and there was not much discussion according to my recollection about it at all.

102 Q. There was no discussion?

A. No, very little, he never would say very much on any occasion.

Q. Would you say generally, that what you said on that trial of the Shedd case was true?

A. I will state that substantially, it is a statement. My testimony is more complete now, because I have had means of refreshing my memory that I did not have then.

Q. Did you have the means at that time of remembering whether you had been there or how long you had been there, better than you have now?

A. No, sir, I did not.

Q. You did not?

A. No, sir, I did not. I had signed an affidavit a few weeks after the meeting occurred of what occurred at that meeting. I had forgotten what the transaction was and have since read that affidavit over my own signature, which has refreshed my memory and makes me more positive now than when I testified before.

Q. Did you say in answer to a question I put to you at that time, this, "I do not think that there was anything agreed upon while I was there, Mr. Koerner, that is my recollection. I was there but a very short time in the morning.

A. I suppose I said that; that is the shorthand reporter's report of my testimony.

103 EDWARD L. THOMAS, the defendant, being first duly sworn, testified as follows:

My name is Edward L. Thomas. I am fifty-two years of age and a lawyer by profession. I reside in St. Clair County, nearly all my life. In the Spring of 1889 I organized a railroad company, known as the Belleville and St. Louis Railroad Company and from that time until the summer of 1890, attempted to get somebody with me to build the road from East St. Louis to Belleville, or more particularly to the coal fields lying between Belleville and East St. Louis near the bluff.

In the fall of 1890 I succeeded in getting Captain W. A. Adams interested, and we proceeded to purchase rights of way and grade, he furnishing the funds for that purpose until the last day of March, 1891, when he died. Having proceeded to considerable expense with the purchase of right of way and grading, Captain Adams having put in in the neighborhood of twenty-five thousand dollars, I made attem/pts to go on with the building of the road; and not being able to get anybody interested in it, I invested myself in borrowed money to the extent of perhaps over fifty thousand dollars and succeeded in procuring right of way that was necessary to be procured, and in grading the road to what is known as the Chester mine, south of the glass works, near Belleville.

During this time, I was attem-ting to procure assistance and late in the fall of 1892, Mr. Bart S. Adams, who was a son of Captain W. A. Adams, directed me to Lucien M. Chipley, who he thought had some capitalists who would be willing to engage in the enterprise. I went to Mr. Chipley's office and was introduced by him to Mr. Samuel H. Leathe. Mr. Samuel H. Leathe, desiring to have a statement of the matter, I wrote him a letter, after he had gone over the road and had employed a Mr. C. F. Stephens, a civil engineer, to make an examination of the matter.

104 I furnished him first the statement of the amount of money that Captain Adams or the Adams estate had in the enterprise, and the amount of money that I had expended, or for which the Company was responsible to me. That statement is substantially, with the corrections that were made upon it on the last page, the same as the bill of particulars filed in the case of Samuel H. Leathe against Edward L. Thomas, I being the defendant in this case. Upon the last page of the bill of particulars will be found the corrections that were necessarily made and were made in pursuance of a statement made in the letter to him dated January 12th, 1893, which he received and a copy of which will be found on page 41 of the chancery record of Samuel H. Leathe, the Belleville and St. Louis Railway Company, and the Belleville and City Railway Company against Edward L. Thomas, tried in the Circuit Court of St. Clair County in the fall of 1893. Those changes resulted in decreasing the amount of the claims in the original statement made to Mr. Leathe to the extent of $2,107.32.

After some considerable examination by Mr. Leathe and by his employed engineer, and by Mr. Chipley and myself, going over it,

and showing it, he concluded that he would go into the enterprise in all probability, and desired me to draw up a contract embodying what we had before talked of and agreed upon in short language as I could. I thereupon drew up this instrument of January 24th, 1893, found on page 43 of the record mentioned. Myself and Mr. Bart S. Adams signed that instrument at that time, and handed it to Mr. Leathe for the purpose of having him and Mr. Chipley—Chipley, who was with Mr. Leathe was to be a co-partner with Mr. Leathe in the matter—signed it also. Mr. Leathe declined at that time to sign it, stating he desired to further consider it and took the instrument signed by myself and Mr. Adams along. The instrument provided that he should take up a certain note of $750, then in the bank, the Third National Bank of St. Louis, which was secured by two of the bonds of the Belleville and St. Louis
105 Railway Company. The Belleville and St. Louis Railway Company had previously issued $150,000 in bonds or one hundred and fifty bonds at $1,000 each, and under our agreement these bonds were to be placed in the hands of Mr. Leathe for the purpose of cancellation, in order to issue, as stated in the agreement, an issue of $500,000 instead. Mr. Leathe took up this note and wrote out a note for me to sign, representing the amount that he had to pay the bank to obtain these two bonds, stating that it was uncertain as to whether he would go into the matter, as he had not fully made up his mind, and that in case he did not go in, he would want this note to represent the amount that he had paid for that note. I gave him my note at that time for the amount he paid.

He also purchased through me or through my endeavors, a lot on the river front, it being the intention to run to the river front and have a dump for coal. He purchased this river front from Mrs. William H. Snyder, Mrs. Jane Snyder, taking the deed in his own name, consulting with me about it and saying that he did not think—that he did not know yet whether he would go in or not, but it would be better for him to retain title to it until after he made up his mind. During this time he also purchased—it was the intention as stated in this instrument, to have in conjunction with the railroad Company, a Coal Company and purchase a large body of coal lands lying on the Bluff for the purpose of opening coal pits, and during this time, and pending things, that will be related hereafter, he purchased these coal lands taking deeds in his own name for the same reason.

Along about the middle of February, 1893, in a conversation with Mr. Chipley, regarding the entrance into East St. Louis of the railroad, which we intended to build, I mentioned to him a charter held by my brother, Charles W. Thomas, then called the Belleville City Railway charter, which I said would give us the right to go into East St. Louis, if we could not get in otherwise. Mr. Chipley
106 became very much interested in that charter and shortly after that came over to Belleville with me or to me and went to my brother's office and talked with him and looked at the charter. Whether I staid with him there or not I do not know, I think I did not, I think I simply went with him down and went away. After

that when I went over to see them again, Mr. Leathe and Chipley together, Mr. Chipley mentioned the fact that Mr. Leathe had determined he wanted this charter. I then said to them that I would try to see what terms Mr. Charles W. Thomas would give it to us on and I went to Mr. Charles W. Thomas and procured this instrument this writing, spoken of by Mr. Charles W. Thomas and showed him this record at page 137, as the written proposition from him for the purpose of showing Mr. Leathe positively what could be done. I gave this proposal to Mr. Leathe and Mr. Chipley. They examined it together and then they insisted that I should get this charter. I insisted that if we paid what Mr. Charles W. Thomas asked, they should share proportionately out of their stock what had been required to be given them, under this contract or agreement that I had drawn up January 24th, that they should pay proportionately for that charter, instead of that it should all come out of my stock. For several days or perhaps a week or two I was objecting to the purchase of the charter because I had to pay for it out of my stock and insisted that they should bear their proportionate amount. Mr. Leathe finally told me, unless I purchased that charter he would not go into the enterprise at all. He had everything that he had purchased in his own name; he had not signed this contract, told me he had not signed it and under the circumstances I purchased this with my own stock, or at least made an agreement with Mr. Charles W. Thomas that I would pay him a certain proportion, $25,000. of such stock as might be coming to me. We afterwards met in the office of
Mr. Chipley a number of times. Generally there was Mr.
107 Chipley and Mr. Leathe and myself and at some time Mr. Bart S. Adams and Mr. John T. Taylor, but not all the time, and during no one conversation I do not think they remained all the time. It was finally after a number of propositions were made by Mr. Charles W. Thomas as to the arrangement that could be made and finally they fixed up the contract and everybody understood it and knew where they were; it was finally concluded that the property of the Belleville and St. Louis Railway Company must be conveyed to Mr. Leathe and Mr. Leathe must convey that and other property that he obtained for railroad purposes and take in the title in his own name to the Belleville City Railway Company; the stock must be given to him, assigned to him and by conveyance to — from him the stock was to be paid, Mr. Charles W. Thomas refusing to go into the matter or take any of the stock unless it was made paid up stock, and that plan was adopted. In those conversations it was also agreed that the bonds were to be issued to Mr. Leathe, or that is to say, that was the plan that was agreed upon, the bonds of the Railroad Company were to be issued to the extent of five hundred thousand dollars, and they were to be placed in Mr. Leathe's hands and he was to pay par for them if he took them, he was to give them out at par for property, and if he sold them to any other person, third person, they were to be sold at such price as all of the parties would agree upon, he was not to be permitted to sell them for any price that he saw fit to sell them at.

Mr. KOERNER: At any price the Board of Directors agreed upon?

A. That was afterwards reduced to writing. I am telling you what the plan was prior to the time we met. That was afterwards reduced to — in that form and the Board of Directors were to be the judges of that, of fixing the price.

Mr. KOERNER: If it was afterwards reduced to writing, then I object to what was agreed upon before.

WITNESS: During this time Mr. Charles W. Thomas drew up a deed from the Belleville and St. Louis Railway Company to
108 Mr. Leathe and drew up a deed from Mr. Leathe to the Belleville City Railway Company and submitted them to Mr. Leathe. After some days a full arrangement having been made we met at the office of Mr. Charles W. Thomas on the 25th day of March, 1893, for the purpose of carrying out the understanding, and the understanding which is the contract in writing, on the records of the company.

There were present at that meeting Charles W. Thomas, Samuel H. Leathe, John H. Holmes, who was the attorney for the Adams' estate and attorney for Mr. Leathe, Bart S. Adams, James Waddock, John T. Taylor, Lucien M. Chipley, Samuel Leathe, Jr., Alpheus Boling, Henry M. Needles, Bissel Thomas most of the time, and myself. We met about nine o'clock in the day and continued the session until noon and adjourned for lunch and came back and continued until about half past four or, I think time enough to take the train on the Air Line. My buggy was there and I took John M. Holmes in the buggy coming by the Court House and stopping there a minute for a certain purpose and then went to the Air Line. I know Mr. Holmes made the Air Line train, whether the others did or not I do not know. That I believe would be 4:20 or 4:25, something like that.

The contract, in so far as it related to the Belleville City Railway Company, was placed upon the records of the Company, and found in this record at the pages indicated by Mr. Charles W. Thomas in his evidence. At this time the bonds of the Company had not been issued, although they had been ordered, as the records show, There was an agreement made by which the bonds were to be issued in May. It was agreed that at the same time that the deed was made, the deed from the Belleville and St. Louis Railway to Mr. Leathe was made on the same date, it was then agreed by Mr.
109 Leathe that he would pay the indebtedness as shown to him by the statement made him prior thereto of the amount of the indebtedness. He informed me and stated there that he intended to take these bonds himself, he had the money and intended to take them.

Up to this time Mr. Leathe had put in no money into the enterprise excepting such as he had put into things that would be conveyed to the enterprise if he went on, taking the title in his own name, or taking notes for moneys that he advanced for myself and Mr. Adams, because of his statement that he was not certain that he was going into the enterprise at the time that he took the notes and bought the property. But after March 25th, 1893, he went on

with the enterprise then, he signed the agreement on record and proceeded with the building of the road.

One of the judgments that he sues on in this case is a judgment recovered by him in St. Louis against me upon this $750 note.

Mr. TURNER (Referee): You owe him the amount of that judgment, do you?

A. I owe that, yes, sir. I made no defense to that judgment.

Mr. TURNER (Referee): Is that in this case?

A. It is in this case, he sues me on that judgment.

Mr. TURNER (Referee): And you say you have no defense to that judgment?

A. No, certainly not, I will have to pay it, I will have to pay eventually, either way. If he had put the money up, why, as a matter of course, it would have to be deducted from my money; that was stated in the letter of January 12th, and that is part of the $3,000 mentioned there, the $750 is part of that $3,000.

After this time I made every attempt to get Mr. Leathe to issue these bonds in compliance with another agreement he had made with me, regarding some land which my wife had conveyed to him, a copy of which I will offer in evidence, the original not being in my possession, and this being copied by Mr. Samuel H.
110 Leathe himself and in his handwriting.

The defendant then gave in evidence the agreement above referred to and which is marked Exhibit "C."

Counsel for plaintiff objected to the introduction of the instrument as irrelevant.

We made every endeavor to procure the issuance of the bonds until about August the 11th, some time in August, there had been notice given by Mr. Leathe to myself and Mr. Taylor that there would be a meeting of the Directors held for that purpose on a certain day, I think it was August 8th. We went to that meeting and Mr. Leathe did not come over and the meeting continued along until August the 11th, when it was held by the Directors outside of Mr. Leathe, Mr. Chipley and Mr. Samuel Leathe who were residents of St. Louis and who failed to come, as shown by these records here, and the bonds were not issued until some time, I think in October, My Mr. Leathe.

Mr. Leathe, after March 23d, 1893, had full control of everything, of both Companies. At this meeting in August the Directors were directed when to issue and sign the bonds. He took hold of it after that and then controlled the Company completely in every respect, we giving up to him in the control all that he wanted.

He commenced in August, litigation against us, against my protest to him at the time and my statement to him that anything he desired to be done we would do, and he continued the litigation, until, I believe that Mr. Koerner or Mr. Holmes, rather got it into him to quit, after he discovered that everything that he wanted we would do, then he quit.

I then brought suit against the Belleville and St. Louis Railway Company to establish the amount of my indebtedness. Mr. Leathe

came into that suit and defended it, employed the attorneys
111 to defend it and defended it, the Belleville and St. Louis Railway Company having nothing to do whatever with the defence. At the same term of Court he filed a bill for injunction against me which is the case of which this is the record, it is Samuel H. Leathe, The Belleville and St. Louis Railway Company and the Belleville City Railway Company, against Edward L. Thomas.

I desire to go back a little: During the conversations had with him and Mr. Charles W. Thomas, myself and Mr. Chipley, he informed Mr. Charles W. Thomas that he had not entered into the contract of January 24th, and would not because he wanted the Belleville City Railway charter. He was told under the Bellville City Railway's charter and the fact that Mr. Thomas going into the enterprsie under that charter would necessarily abrogate any contract that may have been made before, and he assented to that and in lieu of that contract made that contract of March 25th. Some of the features of the contract of January 24th were retained in a measure; one of them was the distribution of stock; the distribution of stock, with the exception of myself was the same as fixed in the contract of January 24th. The distribution of stock was made without regard to any interest that any of the parties had in the enterprise, it was not made with regard to the amount of money that any of them had in or expected to put in. Mr. Chipley was not expected to put in any money, although he was a party to the contract or supposed to be, but the amount given him, as is always given to promoters as compensation for the promotion of the enterprise and procuring capital to go into it. Mr. Leathe understood that the amount he was to get was fifty-one per cent.; Mr. Chipley was to get $78,000, seven hundred eighty shares, and the balance was to go to Mr. Bart Adams, myself and Mr. John T. Taylor, under the agreement, and that was changed by putting $25,000 of it in the name of Mr. Charles W. Thomas out of the amount that was to come to me.

I want to state one point, the amount found due to me by
112 the Court in the case of Edward L. Thomas against the Belleville and St. Louis Railway Company was the amount of money that I had invested in the enterprise with interest up to August first, 1893, and, as shown by this bill of particulars that I filed, in this case, in my original plea of offset.

Mr. TURNER (Referee): What became of the injunction suit?

A. The injunction suit was afterwards dismissed by the Court.

Mr. TURNER (Referee): Was there no appeal taken in either one of those cases?

A. No appeal from either one of them was ever taken. The amount as shown then to be due me was the sum of $53,022.23 August first, 1893. It was agreed that we were to have interest at six per cent. on the amounts invested. I think that is all I want to say.

Mr. KOERNER: Now, Mr. Thomas I suppose is the most important witness in this case. If it could be done, I would be glad to read over his testimony before I cross-examine him, and submit it to associate counsel.

M. THOMAS: That is all right, but it should be written out and

the cross-examination gone into prior to the time he takes any of his evidence. Let him finish my cross-examination first and then I can state the conclusion of my evidence after that time.

Mr. KOERNER: Certainly, that is right.

By consent, the cross-examination of Mr. Edward L. Thomas is continued until Monday, December 26th, 1896, at 10 o'clock A. M.

The defendant then gave in evidence certified copy of the record in the case of Samuel H. Leathe, the Belleville and St. Louis Railway Company and the Belleville City Railway Company *vs.*
113 Edward L. Thomas; the record is certified by the Clerk of the Circuit Court of St. Clair County and is marked Exhibit "D."

Counsel for plaintiff objected to the introduction of the above record. This appears in Exhibit "A" part of the record on page 39 to 245 evidence.

Counsel for the defendant also gave in evidence the proceedings of the meetings of the railroad and coal companies found in the above record marked Exhibit "D."

Counsel for plaintiff objected to the introduction of the said proceedings. See said Exhibit "A" pages 33, 34, 56, 57, 59, 148, 149, 150, 166, 186 (fourth line from bottom), 187, 195, 196, 197, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225.

The defendant also gave in evidence a certified copy of the record in the case of Edward L. Thomas *vs.* The Belleville and St. Louis Railway Company and the same is marked Exhibit "E."

Counsel for plaintiff objected to the introduction of the above certified copy, this appears on pages 25 to 38 inclusive in said Exhibit "A."

The defendant also gave in evidence proceedings of the meetings of the St. Louis, Belleville and Southern Railway Company, held on November 7th, 8th and 9th, 1895.

Counsel for plaintiff objected to the introduction of these proceedings.

Be it remembered that on Monday, December the 26th, 1898, the further examination of witnesses was continued, pursuant to adjournment.

114 EDWARD L. THOMAS, called for cross-examination testified as follows:

Cross-examination by Mr. KOERNER.

Q. Calling your attention to the agreement of January 24th 1893, what was done with that paper after it was signed by you and Mr. Adams?

A. It was given to Mr. Leathe.

Q. That paper you say—In that paper you say "Some proportion of stock to be maintained in coal and other companies to be formed" what did that mean, what did that refer to?

A. It referred to the fact that there had been a company organized to buy coal and we expected to purchase coal lands in the name

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of the same company and transported to market by the road. My recollection now is that it is detailed, probably in the letter of that time, or part of it, I am not certain about that, but I think it is, I think it was mentioned in that letter, at any rate I had a number of conversations prior to that time with Mr. Leathe.

Q. That intention was, as I understand it, that this railroad should be utilized as a coal road and a large coal business should be carried on in conjunction with it.

A. That was the scheme, of course, I conversed with Mr. Leathe about that, prior to that time. There was some mention made in this letter, but nothing special.

Q. Now then, the coal or other companies organized to carry out the project of January 12th, referred then to coal companies to be formed and to be part or an adjunct of the railroad corporation?

A. Well, they were to be formed, other companies, because it was supposed that they could not be carried on under the general charter, that was the idea. The idea was to make it a coal road particularly.

Q. The idea was then to make this arrangement to cover as well the coal companies that might be formed as the railroad companies?

115 A. We did not say anything at all in particular about the Coal Company except that the proportion of stock was to be maintained, that is, the same proportion of stock or the same amount was to be in the hand of each stock holder, the same proportion of the amount of the railroad and the coal company or any company that might be formed.

Q. Was there any coal company formed as contemplated in this letter?

A. We had organized prior to that time, myself Mr. Taylor and Mr. Adams, a Coal Company and had several pits or one pit, we had had two in operation on the Cairo Short Line and on the Air Line. And in our conversation it was contemplated that this Company should be carried on, reorganized and carried on as the adjunct of the new Company.

Q. An adjunct of what?

A. I say it was contemplated that this Company should be reorganized and carried on as the adjunct of the Company spoken of instead of forming a new company.

Q. Was that done?

A. That was done, the Crown Coal Company was re-organized and its name changed to the Crown Coal and Tow Company, the stock increased, &c., everything was done.

Q. The stock was increased in the Crown Coal and Tow Company from a capital stock of $30,000. to $200,000.?

A. Yes, sir.

Q. How much of that stock was assigned to you?

A. The same proportionate amount that was assigned to me as the stock of the railroad company, that was the understanding, the same proportionate amount that it bore to the railroad company stock.

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Q. That was the understanding and the arrangement?
116 A. No, not the arrangement, that was the understanding all along, it was one of the conditions of the scheme, the foundation of it. The two companies were to be owned by the same stockholders in proportion that the one held to the other.

Q. That was provided for by the arrangement?

A. It was one of the provisions of this arrangement, one of the propositions of that letter, stated in that letter, one of the propositions in that letter, but it was not done under that agreement, because that agreement was never perfected.

Q. How much did you invest in that coal enterprise?

A. We had invested—do you mean myself individually?

Q. I am speaking of you.

A. I had invested five or six hundred dollars and then had purchased part of my brother's stock, five hundred dollars or more, I think a thousand or eleven hundred dollars. And then, of course, that was the first original investment, but, there is something I have never spoken of before, we had with the profit of the enterprise for a number of years kept increasing the property. Instead of taking any profits out, we had built up our mine with more than five thousand dollars profit in that mine, we had borrowed the money, and we increased the value of the mine and continuously invested the money we made out of the mine, which we could have taken out as profits. I suppose we invested in that mine in the neighborhood of fifteen thousand dollars, between twelve and fifteen thousand dollars in everything, roads and boxes and machinery, air shaft and shaft and a switch.

Q. How much had you invested in the railroad enterprise?

A. Well, in the railroad alone, in the neighborhood of forty odd thousand dollars, forty six or forty eight thousand dollars. I think on a settlement, it amounted to $48,000. and something; that is what I called investment, that was the labor and money paid out and the price of the grading included in it. I had at the time of the
117 settlement, under my agreement with Captain Adams and with the old Company, I had about fifty-three thousand dollars coming to me.

Q. You had about forty eight thousand dollars invested, including the grading?

A. Altogether, yes, sir, and the interest ran up to fifty three thousand dollars. Well, it was more than forty eight, it was sufficient to give one-half time interest, the way we settled was to give one-half time*d* interest, calculating the money as being paid half time, taking the number of years and then dividing that by two and taking one half time interest, that made the amount $53,022.23.

Q. That money included all that was unpaid?

A. It included a good deal that was unpaid that I was responsible for, and all the amounts that the Company had become responsible for to me.

Q. How much did it include that was unpaid?

A. About eleven thousand dollars, one way and another. Most all of it had been paid by me with the exception of about $4500. that

yet remains unpaid, that is to say, $3500. is the amount with Mr. Boling and then a thousand dollars besides, that is my own thousand dollars.

Q. Was any of that amount paid by other parties since that time, of that fifty three thousand dollars?

A. By anybody else?

Q. Yes.

A. No, no part of it has ever been paid to me by anybody.

Q. Did you include in that fifty three thousand dollars, the money you borrowed on your wife's farm, when you made a mortgage on it?

A. Some of the money that I borrowed on my Wife's farm was for that, but very little of it. At one time the debt that I owed was fifteen thousand dollars, most of that was borrowed on my wife's farm at that time.

Q. Has not that been paid by some of these companies?

118 A. No, sir, I can tell you about that if you want to know. The Crown Coal and Tow Company bought the coal, I deeded or rather I made the agreement with Mr. Leathe and deeded the coal to him and he deeded it to the Crown Coal and Tow Company; I am not certain whether the deed was to the Crown Coal and Tow Company or whether to Leathe; I think I deeded to Mr. Leathe and he deeded to the Crown Coal and Tow Company, that is it. And he agreed to give me for that $25,000. of the railway bonds, the Belleville City Railway bonds. That is the agreement that I presented the other day, that is to my wife, rather, dated March 25th, 1893, and marked Exhibit "C." Not complying with that contract I commenced suit, or had Mr. Gundlach rather commence suit against him on these mortgages. In March, 1894, a new agreement was made between the Crown Coal and Tow Company and my wife.—I am a little hasty in saying I began suit. That was afterwards.

The new arrangement made between the Crown Coal & Tow Company and my wife by which it was agreed that the land should be deeded by the Crown Coal and Tow Company to my wife and the coal retained and eight acres of surface and right of way, making in all about fifteen acres. For that the Crown Coal & Tow Company agreed to pay the mortgages that were on it to Philip M. Gundlach and to Anthony Pfeiffer, amounting at that time to $14,000. and some hundred dollars, with the exception of nine hundred and something which I was to pay or see to being paid and for which I gave my note to Mr. Leathe, on condition that he pay it. That note is held by him yet. They refused to pay and Philip M. Gundlach sued them for the amount of the mortgage and sued the Crown Coal & Tow Company on this condition in this deed and recovered a judgment, levied upon the engine and property, (they were putting up a new mine) in March, I think, 1895, and thereupon Mr. Leathe purchased the mortgage of him and took an assignment of the decree.

Q. In that way you were paid?

119 A. What's that?

Q. You got the benefit of that money, did you?

A. Not then, no sir, I never got the benefit of that at all at that time.

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Q. Did you at any time?

A. No, he held those judgments or those decrees over and one of them had been sold and redemption would expire on or about the eight- or twelfth day of December, 1895, (he bought that also), the certificate of purchase, and on November 8th, or about that time, in order to get some bonds that he needed and wanted, he released those decrees to my wife, he executed a release deed from him to my wife.

Q. You then got the benefit of it?

A. No, I did not, my wife got the benefit of them, I think.

Q. What bonds were those that he wanted to get that he released them for?

A. Some coal bonds, of the Coal Company that had been given to me by resolution of the Company that he garnisheed in St. Louis before I could get them on one of the judgments that he now sues upon, that is to say he had brought a suit and an attachment was served on the Trust Company.

Mr. TURNER (Referee): You mean they garnishe-d on one of these judgments?

A. Yes, sir, they garnishe-d the Trust Company on one of these judgments, that is, they commenced a law suit and issued a garnishee.

Q. Did they realize anything on that garnishment?

A. They never did.

Mr. TURNER: Now then Mr. Thomas, in order for him to get those bonds of yours, $5000. were they, that was the face value?

A. Yes, sir.

120 Q. You say he had to agree to pay this $14000?

A. No, I did not finish my answer, you did not wait until I got through.

Q. Go on.

A. Well, he had of course, I presume, I do not know that to be a fact, only from—well, I know it from him, yes. He was an officer of the Crown Coal and Tow Company, in order to carry out what he desired to do, he released the bonds; he was in charge of the Crown Coal & Tow Company, it was really the debt of the Crown Coal and Tow Company and not my debt any more, because I sold or my wife sold the coal to them for that, and after the land was deeded back to her or with the same transaction, the consideration of it was that he was to undertake the payment of these.

Q. You allowed him to have those $5000. in consideration of him making those payments?

A. No, not at all, Mr. Koerner, it was for the purpose of getting the matter settled, that was all and to get my wife's land clear of encumbrance what had been agreed to long ago under an arrangement between all the parties. And I stated to my brother that I would not do anything I insisted that that should be done before he could get my bonds. He should settle the matter that related to my wife's land, that was all that I desired to have settled and that I insisted upon.

Q. And on the strength of that he did get those bonds?

A. Not exactly, he made another agreement.

Q. What has that got to do with those bonds?

A. Why, simply because the bonds could not be taken out; he wanted to sell the bonds, I suppose, to dispose of them, he wanted them, and in order to get them I insisted on his complying with the contract regarding my wife's land and then at the same time, I having taken them as an indebtedness of the Crown Coal & Tow Company to me, I insisted that I should be replaced in my position before that time, the same as if I had not taken the bonds; that was done
121 by all of the Directors that were present at that time, I was not there myself. They signed an agreement to that effect upon which I brought the suit which has just been determined by the Supreme Court.

Q. Well who did you negotiate with in regard to that matter?

A. I gave a written memorandum of what my brother could do for me in St. Louis to him.

Q. Then what you say now were the things done by your brother?

A. They were done, yes, I suppose they were done. They were done in pursuance of this written memorandum, because I know they were done, that is all, I was not present.

Q. Then you do not know anything about that?

A. I know they were done.

Q. So these things that you say you insisted upon you did not impart them to Mr. Leathe or anybody acting for him?

A. No, sir.

Q. That was an insistence in your own mind?

A. It was an insistence in the memorandum; my brother came to me and said that Mr. Leathe wanted these bonds.

Q. Well, that would hardly be proper.

A. Well, I do not know much about that, I can not tell about that, all I knew from him is all I know about it. I was not there and had nothing to do with the transaction, except what I informed him was necessary to be done.

Q. What you have said here as to this mortgage being released as a condition to your agreeing that the bonds should be turned over to Mr. Leathe is all only a matter of hearsay?

A. No, sir, the mortgages were released. The arrangement was made and signed by Mr. Leathe. You know I have the agreement signed by him in writing.

Q. I have not seen that?

A. The agreement, that in consideration of those bonds——
122 Q. Is that another agreement?

A. No, that is not the agreement that I have spoken of. Where this was done, it recites that I surrender the bonds to the Company, the $5000., whatever interest I may have in them—I have got the original in my office, I want to bring it over and want to make it an Exhibit to my cross-examination.

Q. Now, Mr. Thomas, You surrendered those bonds to the Company, did you?

A. Well, all I did with them, I surrendered them.

Q. To Mr. Leathe?

A. No, I surrendered them to the Company.

Q. You say Mr. Leathe required them?

A. Mr. Leathe required them and got them into the treasury of the Company, that is what I was informed, that part of it, but I surrendered them to the Company under that agreement, signed by all of them; it is signed by Mr. Taylor, Mr. Bart S. Adams, Mr. Samuel Leathe and Samuel H. Leathe, who was President, and Fred Merrills, who was one of the Directors at that time.

Q. You did not give a written order on the Union Trust Company to deliver those bonds to Mr. Leathe?

A. I might have done so, I do not know that I did, I do not recollect that, but I might have given them an order to deliver them to Mr. Leathe, but that, of course—we rather considered, all of us, Mr. Leathe to be the Company, you know, in all our dealings with him. In those matters we looked upon him as being the Company and he controlled everything completely.

Q. It was Mr. Leathe, however, who had garnished the bonds, and not the Company?

A. Yes, sir, that is all right, Mr. Leathe garnished the bonds, but he wanted, as I say—well, that is on information, and I will not state that. The bonds were surrendered by me to the Company and whether Mr. Leathe got them or not, I do not remember. And whether I gave an order for them to him, I do not remember.

123 Q. When you say that the bonds were to be surrendered to the Company, you say that on the theory that Mr. Leathe and the Company are interchangeable terms?

A. No, I consider that if Mr. Leathe got them, he was treasurer of the Company. I made an agreement with the Company to surrender them, that is all the agreement with the Company, a written agreement signed by all of the Directors, excepting Mr. Chipley and myself.

Q. Mr. Thomas, the Company at that time was not asserting any claim on these bonds, was it?

A. None whatever.

Q. Mr. Leathe, however, was?

A. Yes, he was to a certain extent, that is to say, he wanted to get them.

Q. And before they could be delivered to anybody, your consent was necessary, was it, unless an order be obtained from the Court?

A. I was so informed that the Trust Company wanted my consent for them to be delivered.

Q. Then you did give an order to deliver them to Mr. Leathe?

A. I am not certain about who I gave the order to, but I know that I made the agreement with the Company, or the agreement was made for me with the Company.

Q. Well, that agreement that was then made that I spoke of, was that the consideration for you to surrender the bonds?

A. That was one of the considerations of my surrendering the bonds.

Q. You say that was one of the considerations?

A. Yes, sir.

Q. There were other considerations?

A. The other consideration was, they were to release the liens of these mortgages on my wife's land, they having agreed to purchase the coal for those mortgages.

Q. Those amounted to about twenty thousand dollars, did not they?

124 A. No, they did not amount to that. At the time of making the agreement, in 1894, they amounted to $14,000. That was agreed to be paid. It was fourteen thousand and some hundred dollars.

Q. I mean at the time? I mean at the time that you say, they agreed to take them up?

A. I couldn't tell you how much they amounted to, there were some other matters included in that, Mr. Koerner, that we had to release too, that was released.

Q. Now, when you say that you insisted that they should be released, that was a consideration that you demanded besides the written agreement of which you have spoken.

A. Certainly.

Q. There was no written agreement entered into in regard to that, was there.

A. About what?

Q. In regard to releasing these mortgages or paying them?

A. Only written directions to Mr. Charles W. Thomas as my wife's agent.

Q. By you?

A. Yes, sir, that is all.

Q. Under that you say there was an agreement made that the Company should assume this debt?

A. That was made when the deed in 1894, in March, was made, because it was then agreed that for the deed they would pay these mortgages, for the coal and the eight acres of surface and the right of way that they retained. First I made the deed to Mr. Leathe under an agreement that he was to give me those $25,000. in railroad bonds. He deeded to the Crown Coal & Tow Company and declined to carry out his agreement. We brought suit to make him do it and we settled that matter, that coal matter in 1894 and the railroad matter was left in abeyance. It was agreed between us that it was to stand as it was, but of the coal matter I insisted that there be a settlement at that time, anyhow. Mr. Leathe wanted to issue bonds and I insisted that it should be settled. They

125 should carry out the agreement and they agreed then to re-deed the surface to my wife, excepting this surface that they retained and in that deed, they agreed that they would pay these mortgages, excepting nine hundred and some odd dollars for which I gave my note, or my wife gave her note, rather, to Mr. Leathe.

Q. Now, Mr. Thomas, did you not say a little while ago, during this cross-examination, that they agreed to pay those mortgages because they had to do it in order to get those $5000. bonds that they wanted?

A. Well, that was later on, Mr. Koerner. That was when they refused to pay them under the conditions in the deed and then

they wanted these bonds, Mr. Leathe wanted them, I suppose, I was so informed, and I insisted that the Company should carry out its agreement.

Q. Now, you insisted that to whom?

A. I insisted that to Charles W. Thomas.

Q. Do you know what he did about it?

A. I do not know what he did about it, except I know that it was done. I know it was done, I know that they were released.

Q. Was it paid by the Company?

A. I know that it was assigned by Mr. Leathe to the Company.

Q. Well, was it paid by Mr. Leathe or the Company?

A. I know that Mr. Leathe, as I told you, purchased these judgments or these decrees and took an assignment to himself.

Q. Well, he paid for them individually then, did not he?

A. I suppose so, Mr. Gundlach told me, I did not see him pay it.

Q. Then this payment was not a consideration for the transfer of these mortgages for the five thousand dollars in bonds?

A. Not the consideration for that much money, no, but simply to have it settled up, that was all. I would not permit the bonds to be sold or to be transferred back so that they could use them unless this was settled. That was all. It had been agreed to pay before.

Q. Was that settled before the bonds were delivered?

126 A. I was not there, I only know that Mr. Charles W. Thomas brought over a release deed for those things, and I knew no more about that, I know I was not there.

Q. He brought that at that time, did he?

A. Yes, sir, about that time, I think it was. The negotiation was pending a couple of days, possibly two or three days, I was not there at all.

Q. Now, coming back to this agreement of January 24th I understood you to say that there was nothing done under that by anyone?

A. There was nothing done under that agreement, directly. There are two or three things done by Mr. Leathe before the agreement was signed. He was still taking title to whatever he bought in his own name, one piece of property, which belongs to the railroad Company, to which he took the title in his own name, and he paid this note at the bank and took my note for it, and I think, I will not be positive about the other matter, I only know that by hearsay, in regard to the Johnson note.

Q. You filed a plea of set-off here and in the second special plea of set-off, in which you seemed to insist on the validity of this agreement, and claim to be entitled to some money thereunder, am I right in my construction of this?

A. No, sir, my own individual evidence is that that agreement is not in force and never was in force.

Q. Well, did you file such a plea.

A. I filed such a plea as that.

Q. Well, then, it would probably expedite this matter if you would say whether or not you are insisting on that plea?

A. I am insisting on every right that the evidence shows that I am entitled to. I am fortifying myself for men that I know cannot be trusted in their oaths, and what they will swear to I do not know, except from what I have heard them swearing before.

Q. Well, if you will excuse me, I do not know, I may be
127 wrong about that, I would like to understand thoroughly; you claim then both on the theory that the agreement of January 24th was in force and that it was not inforce?

A. No, sir, I claim generally on the theory that he agreed to pay the money for this conveyance to him.

Q. That was contemplated also in that agreement, after he should have been paid?

A. Yes, sir, after that, in that agreement.

Q. That is correct?

A. After the bonds were negotiated. And he took the bonds and he was to pay this. I never asked him to pay until he took the bonds and then I insisted that he ought to pay it.

Q. Did he take the bonds?

A. Yes.

Q. What do you mean by that?

A. I mean that he agreed to use the bonds; he said he was going to take them and he did take them, that is what I mean both in law and in fact too, I suppose.

Mr. TURNER (Referee): He took what bonds?

A. The Belleville City Railway Company bonds, he became responsible for them under a contract with the Belleville City Railway Company.

Q. Well, as soon as they were issued and signed, they were to be in his possession as treasurer of the Company, were they not?

A. Oh, that was one of the things that he put in through your advice, I presume. He put that into the thing after we had all withdrawn from the Board and he had elected a straw Board to suit himself and did as he pleased. The Board of Directors ordered them turned over to him according to the contract of March 25th, 1893, and that he afterwards rescinded and the Appellate Court decided that that decision was illegal, as a matter of course.

Q. Where did they decide that?

128 A. They decided that in the case of Rice against the St. Louis, Belleville and Southern or rather St. Louis, Belleville and Southern Railway Company against Rice. They also decided that he sold the bonds in 1893, too, Mr. Koerner, if you will read that decision.

Q. Under the agreement of March 25th, 1893, that compelled Mr. Leathe presonally to be responsible for all the bonds at par?

A. No, sir, I do not claim that the contract compelled that, if carried out, but I do claim that his conduct made him responsible for them.

Q. That is to say, you do not claim then that there was a contract to that effect?

A. There was a contract in three parts. There were three parts for that contract. If you will read it you will see that there are

three parts to it. One part was that such bonds as he took he was to take them at par; such bonds as were used to pay for property should be paid out at par, and such bonds as he should sell should be sold at a price to be fixed by himself and the Company, by the Directors.

Q. Suppose they were not sold, but were lying there in the treasury of the Company, that made him in your view, personally responsible for them?

A. Oh, no, my view was not that way, Mr. Koerner, my view is that he agreed with Mr. Bart S. Adams and myself to hand us those bonds, to give us bonds, and that he could not do it without taking them, and he said he was going to take them at the time.

Q. You did not hold then that he was compelled to take them, by the contract?

A. No, he was not compelled; he could have brought the Board of Directors together, when he got ready to sell them, and got them at an agreed price; that he never saw fit to do, never did.

Q. Did Mr. Leathe, after this agreement of January 24th, 1893, put up bonds to carry on the enterprise contemplated in that agreement?

129 A. Not in either of the Company's in the name of neither of the Company's, not a dollar. Everything that he put in he took the conveyance in his own name and the amount of money that he paid as far as I am concerned, he took my individual note for that and sued me and got a judgment on it and is now suing me here on the judgment.

Q. You make no distinction in the enterprises between the enterprise carried on as the Belleville City Railway Company and the Belleville & St. Louis Railway Company, that is not your point, that it is another name, is it? You do not make that distinction? The enterprise generally was the same, under the Belleville City Railway Company as under the Belleville and St. Louis Railway Company?

A. No.

Q. They were entirely different enterprises?

A. Why, the Belleville and St. Louis Railway Company sold out all of its property, it had no more at all of any kind I have maintained, that was an entirely different organization.

Q. Prior to the time of this agreement which you had——

A. The Belleville & St. Louis Railway Company had no more application, because when we met, when the question of the Belleville City Railway charter came up, the entire matter was abandoned, there was an abandonment by all of us of everything that had been done in regard to contracts or agreements or arrangements and an entirely new one was made. The only thing that was retained was the division of the stock in the same proportion.

Q. When was that agreed to?

A. It was simply the same division of stock was made, that was all, excepting that it was agreed that there would be the same proportion of stock in the companies that we had pending the negotiations concerning the Belleville City Railway charter. Mr. Chipley, Mr. Leathe, Mr. Charles W. Thomas and myself frequently talked the matter over, time and again.

130 Q. Well, what was said between you then was "We will abrogate the contract of January 24th, except that we will have the same division of stock?"

A. We did not say anything of that kind, sir. We simply said the old contract has no application to the new matter, a new contract would have to be entered into. And thereupon we went on and talked and several different propositions were made and were rejected and finally one was made that was carried out on the 25th day of March.

Q. Well that was partly in writing, you say, that agreement, but the part that referred to the distribution of stock, that was not in writing?

A. That was done right there.

Q. That was done right there?

A. Yes, sir.

Q. There was no agreement to that effect made beforehand?

A. There was some talk about it. We had before talked about all those matters and about the matter of building of the railroad which was constructed.

Q. As a matter of fact, the building of the railroad which was constructed under the Belleville City Railway charter was the same which was contemplated under the Belleville & St. Louis Railway charter.

A. It was built in the same way for the same general purposes, yes, sir and over the same route.

Q. And as far as the adjuncts are concerned, the Crown Coal & Tow Company, that became an adjunct to the Belleville City Railway Company as it had been an adjunct of the Belleville & St. Louis Railway?

A. The same as had been contemplated before.

Q. Now, I will ask you this specific question, which I asked you just now, but I do not remember whether it was answered: Did Mr. Samuel H. Leathe, after January 24th, 1893, put up funds to carry on the enterprise of building a railroad between Belleville and East St. Louis and to develop the coal company which was an ad-

131 junct thereto?

A. No, he did not, not in that way. He put in money and purchased coal lands and bought this Snyder tract of land, but he took everything in his own name and stated time and again that he was in position to withdraw from it and would withdraw unless the Belleville Railway Company charter was obtained, time and again.

Q. Was there under the agreement the present bonds, $150,000 placed into the hands of Samuel H. Leathe to hold until other bonds were issued?

A. They were placed in his hands under that contract and it was agreed when the other bonds were issued that they were to be cancelled.

Q. Did he advance the amount necessary to take up four bonds then held by Mrs. Johnson, $2,000 with interest?

A. I am informed that he did and took Mr. Bart S. Adams' note which is the same as he took my own note for $750 at the Third National Bank.

Q. Did he also advance $750 and interest to the Third National Bank in St. Louis?

A. He did, and took my individual note for it and sued me on it, recovered a judgment and brings the judgment here to collect it off of me.

Q. Did he advance that money?

A. Yes, he did, and took my individual note for it.

Q. Did he advance the money?

A. He did, paid off that loan and took my individual not for it and sued me on it and is now bringing it here to collect it.

Q. Now, was it so arranged in the distribution of stock that Edward L. Thomas or those to whom he directed stock to be issued received $104,000 of stock in the Railroad Company?

A. No, sir, it was not. When *then* the Belleville City charter came into controversy, Mr. Charles W. Thomas asked for $25,000 of stock in that Company to be given him, before he would allow the Belleville City Charter to be used. I insisted that Mr. Chipley and Mr. Leathe should contribute their proportion of that stock with
132 me; they declined to do so. Mr. Leathe said "I have not executed this contract and will not execute it unless you surrender from the share that is coming to you under this contract a sufficient amount to pay Mr. Charles W. Thomas for that charter, and the agreement was made that Mr. Charles W. Thomas was to get $25,000 and I was to get the rest and out of that I directed Mr. Leathe to give Mr. Needles $2,000. That was my own direction.

Q. Then the amount which you got and disposed of to Mr. Charles W. Thomas and to Mr. Needles together aggregated the $104,000?

A. I did not dispose of it to Mr. Charles W. Thomas. The agreement was made by which I had to take 770 shares and the $2000 made it 790 shares and Mr. Leathe assigned to Charles W. Thomas the $25,000 that being the arrangement that was made. This agreement of January 24th was not in force.

Q. Did Bart S. Adams receive $50,000 of stock in the Railway Company?

A. He did.

Q. Did John T. Taylor receive $12,700 of that stock assigned to him?

A. Yes, sir, and 783 shares to Mr. Chipley.

Q. Did Mr. Leathe subsequent to the signing the contract of January 24th invest any money to forward the enterprise contemplated in formation or extension of the Crown Coal & Tow Company?

A. He bought coal lands that we had intended to purchase. He bought them in his own name.

Q. To what extent?

A. To a very large extent, to the extent of perhaps $60,000 or $70,000, that is, he did not pay that amoun. of money at the time, he paid out I think one fourth of that.

Q. He made himself responsible?

A. He made himself responsible, yes, sir. He gave individual notes and mortgages on the land.

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Q. Did he buy any boats?

133 A. He bought the Western Coal & Tow Company's boats and barges and afterwards deeded them to the Crown Coal & Tow Company under the agreement of March 25th.

Q. How much did he expend?

A. Well, I only know what I heard him say. Of course I know generally.

Q. For these boats and barges?

A. I know he paid the Griffith heirs $22,100, that is, he paid a man by the name of Bogg $100, and then he paid the Adams heirs one-half of the $22,000, which would be $11,000. They owned one-third.

Q. There was still other steamboats, were they not?

A. He bought the Archie Parker, that is what I heard him say, for $6,000. I think that was done before this.

Q. He turned that over to the Company, did not he?

A. He turned all of it over under the agreement of March 25th.

Q. That steam-boat, he had bought that, Mr. Thomas, prior to the agreement of January 24th, had not he?

A. I think he had, I am not certain about that, but everything was obtained prior to March 25th in his own name, and he insisted all the time that he was prepared to go out and that he would not go in under this arrangement.

Q. Am I not correct, Mr. Thomas, in saying that these coal lands that he purchased would have been of little value to him unless they had been bought in contemplation of building the railroad?

A. I do not know that he would have lost anything, but as a matter of course I presume that he could have built a railroad to them after *I* was done.

Q. Don't you know that he bought them in contemplation of this enterprise going through?

A. I think he did, but he took them in his own name.

Q. He did it in furtherance of the plan, that is all?

A. I think the circumstances show that.

134 Q. The same may be said of the Snyder lot?

A. The same thing; well, the Snyder lot was valuable anyhow. That would be worth the money most any time.

Q. Nobody would—you do not think Mr. Leathe intended to buy without this thing being there?

A. I don't think he did. I do not think he would have bought without he had intended to go in there, I don't think he would. He might have done it, however, but still that would be a property that would be valuable without the railroad—and so would the coal, because it would eventually have a railroad to it, the coal lands I mean.

Q. You said here on January 24th, 1893, over your signature "In consideration of above agreement," which was the agreement referred to of January 24th, I agree to leave in the hands of Samuel H. Leathe all sums coming to me as a guarantee of the statements made in my letter to him of January 12th, 1893, and as security to hold until all matters are fully arranged and paid for which I am

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responsible as per said letter and statement rendered." That is correct, is it?

A. I signed that.

Q. Did you so leave those things?

A. No, the whole thing was abrogated on March 25th. We did not carry anything of that kind out. The whole thing was abrogated. I did not leave them at all with him. He never asked me to at all.

Q. What did you mean by sums coming to you?

A. I meant money that was coming to me under the statement that I had rendered to him. I had intended, if we went on with that contract, to leave it with him until he was satisfied that my representations were correct.

Q. They have remained there, have they?

A. Yes, I should say so, but not under that contract, Mr. Koerner.

Q. There are only certain things you will see here that I
135 have arranged to pay for, and for which I was responsible. I was not responsible—there were a few things he declined to pay for.

Q. The enterprise contemplated originally under the charter of the Belleville and St. Louis Railway Company was by mutual consent transferred to the corporation known as the Belleville City Railway Company, was it?

A. Well, as I stated before, I still insisted all the time that if Mr. Leathe had executed that contract, there would have been no Belleville City Railway charter in it, but knowing that he had not executed it, and knowing that he would not go in without this other thing, having advanced as far as we had, I had to accept the other charter and under the new contract, as executed, and as you have read it here.

Q. The property of the said Railway Company, in said contract mentioned was by mutual consent transferred to the corporation known as the Belleville City Railway Company?

A. Oh, it was by mutual consent, of course, I had to consent to it after a while, and I did it.

Q. The said enterprise was thereafter conclusively carried on under the name of the Belleville City Railway?

A. It was carried on under that name.

Q. Then it was the same enterprise which was originally contemplated under the contract of January 24th?

A. It was the same road we intended to build, but it was not building it under the contract of January 24th, nor was it building it under the same name. That contract was entirely new and a distinct contract, made along the different line.

Q. Well, do I understand you to say that the statements made in the plea marked second special plea of set-off are said by you to be correct?

A. No.

Q. You do not say that those statements are correct?
136 A. I do not swear that that contract was in force, never.

Q. That is not my question.

A. That is the plea where it sets out this contract, is not it?

Q. You may look at it, that is what I want to get at. You may say it is the second plea?

(Handing witness the plea.)

A. Yes, that is the one. I do not say that that is the contract existing between the parties or that it ever existed between them.

Q. Well, those words, that I specifically read to you a few minutes ago, were they correct? Was that your method of stating that that was the contract to build?

A. The Belleville & St. Louis Railway Company was changed to the Belleville City Railway Company by arrangement between the parties, and that is the same railroad that was to be built under the other one, and was built under the Belleville City Railway charter. I do not think there is another lawyer at the bar who would ask such questions about a plea. I do not believe any other lawyer would do it.

A. I come here to ask you in the light of what we have.

A. Oh, well, that is all nonsense, you know that.

—. I want to ask you the question whether you proposed to insist, before the referee, upon a recovery under this second special plea?

A. I propose to insist before the referee upon a recovery on any plea that I have filed that the evidence, after it is all in, before the referee, may show that I am entitled to recover under.

Q. Is that as definite as you desire to answer that question, is it?

A. That is as definitely as I can answer it.

Q. In other words, I understand then, you propose to insist upon all the theories set out in these pleas?

A. I propose to insist upon a recovery upon any plea in this case that the evidence may sustain after the evidence is all in; as everybody does in every case they filed pleas in.

137 Q. I do not think you have answered my question, but then if you do not desire to answer it in any other way——

A. I do not see how I can answer any other way.

Q. Your entire investment then, as I understand you, in this railroad enterprise, including moneys that you borrowed and owned was $48,000. and it had grown to $53,000. by interest at the time this note was made to you by the Belleville & St. Louis Railway Company?

A. I forget the figures, you have it there. The amount including work, labor and everything in all, amounted to $48,279.58, and interest on that for one-half of the time from the beginning of the investment to the end of it amounted to $4,742.65, which made a total, when settled with the railroad company of $53,022.23.

Q. And your total amount in the Crown Coal Company was $600.00, was it not?

A. No, it was $1100. I had purchased the stock of my brother; you know my brother was in, George K. Thomas, and I had purchased his stock. My original amount was $600. and I purchased his, making a total of $1100. The original was $3900. I believe, and then $5000. which was borrowed, makes $8900. That was the total originally, but at the time of the reorganization, it was very much more valuable than that money.

Q. Was it not stated in a resolution of the Crown Coal Company by the Board of Directors, on or about the 25th day of March, 1893, that inasmuch as there was some doubt as to how much was paid before the fact was that the capital stock paid into the Company was $8,900, of which you paid $600.?

A. Yes, sir, that is all that I had paid in originally, but I had purchased some of the stock, which was included in that $8,900. and there was no division of that made. There was George K. Thomas, I had his stock; in other words, we considered that stock wiped out, practically. Mr. Adams had some of it and Colonel Meisenburg had some of it and I had some.

138 Q. Now, Mr. Thomas, so then you say that this was about $1100.?

A. I really had invested before March 25th $1100. that is right, but when we talked of it, there was talk of the original investment and we did not say anything about any investments that were wiped out, but Mr. Adams and myself and Mr. Taylor, because we were the only three that were interested.

Q. Then that made your investment in the two enterprises something like $54000. or $55000.?

A. Actually laid out investment without service, yes, sir. You mean my interest in it.

Q. Yes, sir.

A. Yes, sir, it amounted to about $54,000.

Q. Now, have you received any returns from that investment?

A. I have not received anything from that investment in any sort of a way excepting through Charles W. Thomas and of that investment I have never been paid anything, not a cent of it.

Q. What did you receive from Charles W. Thomas?

A. I transferred all my stock to Charles W. Thomas but one share in each Company and my wife tran-ferred her stock. I had formerly transferred nearly all of my shares in the Coal Company to my wife and they were all transferred to Charles W. Thomas in May, 1894, excepting one share in the coal company and one share in the railroad company and those I transferred to him on either the seventh or eighth day of November, 1895, without any agreement of any kind.

Q. He held them for you, did he not?

A. He did not. I was indebted to him for a considerable sum of money at that time. I first transferred them by chattel mortgage to him and the bank made some claim, the Savings Bank and I transferred them to him absolutely.

Q. Well, he acted for you, did he? In October and November, during that time of which you have spoken, when these arrangements were made in regard to the bonds. You say he was

139 acting under written authority from you?

A. Yes, sir, on written authority. The only written authority is that memorandum in writing. He had no authority to settle any of these railway matters at all in any sort of way, in fact, it was quite the contrary.

Q. You were then in that transaction and deal considered as the owner of that stock, were you not?

A. What is that?

A. Were you not in that deal considered and treated with as the owner of that stock?

A. No, sir, not at all, in no sort of way. I was not directed to be there, and I was not there, present at any transaction whatever.

Q. Were you not represented there by Charles W. Thomas?

A. No, sir, I had nothing whatever to do with it in any sort of way.

Q. Well, I want to know whether there was not fifty thousand dollars paid on that stock which was thus assigned to you and Charles W. Thomas about the eighth day of November, 1895?

A. That I could not tell you, sir. I could not tell that except by hearsay what Charles W. Thomas got for his stock.

Q. What did you get?

A. I got nothing for the stock, sir, not a cent, there was no sort of an agreement whatever. I got money from Charles W. Thomas on the 12th, 13th, and 14th of November, 1895.

Q. Did not he account to you for the $50,000.?

A. He did not.

Q. Any part thereof?

A. He did not account to me at all, it was not necessary, to account to me. I owed him so much money and there was so much that he gave me and that was all there was of it. I had no agreement with him, and I don't think I could have collected from him at all.

140 Q. Where did he take that money from that he gave you?

A. I know from him what it was derived from.

Q. What was it derived from?

A. He told me that he sold his stock in that Company and the dispute in regard to whether I would accept the amount of money he offered me was because I wanted to discover or learn whether or not there had been anything done in the transaction that would in any manner affect my claim against Mr. Leathe, for the money I had invested in the Railroad. If I had found that there had been, I would not have touched a cent of it in any sort of way. I refused to permit Charles W. Thomas to speak of that matter for me as my agent and told him specifically and he agreed that nothing would be done to injure or affect my claim against the Railroad Company.

Q. How much money did you and Charles W. Thomas together get out of the Railroad Company?

A. Whatever the agreement called for. I never knew what the price was except I have a written agreement or a written copy of the agreement of Charles W. Thomas, showing what the contract was.

Q. How much money, I want to know, did you and Charles W. Thomas get out of that property for your interest in that property?

A. For my interest, I had no interest in the stock at that time, I told you. I had turned every share of it over to him.

Q. How much did you and Charles W. Thomas receive?

A. According to that agreement I have it and want to introduce it and make it an exhibit to my evidence, Charles W. Thomas received in the neighborhood of $44,000., so that writing states.

Q. Was it not $50,000., Mr. Thomas, independent of what the writing states?

A. No, sir, I do not know anything independent of the writing and what Charles W. Thomas told me.

Q. Don't you know that in addition to the $44,000. as you state, that there was a judgment paid out of the $50,000. of some
141 six or seven thousand dollars?

A. It was not done with my consent.

Q. Don't you know that?

A. No, sir, I know it was not out of those $44,000.

Q. But out of the $50,000.?

A. I only know about that what my brother told me, what Charles W. Thomas told me, that is all I know.

Q. Did he tell you that?

A. No, sir, he told me that he declined to pay the judgment in any way at all, or to have anything to do with it.

Q. Yet it was deducted from this amount?

A. He said that rather than have the matter not go through, that he had $12,000. and some hundred dollars that he wanted to get out of the purchase money of this stock and he told them he would not have anything to do with that judgment——

Q. Then the purchase money was $50,000.?

A. It was not so stated in that agreement.

Q. Didn't you talk that over quite a while?

A. I was not there and do not know anything about it.

Q. Don't you know that?

A. I was not there, I only know the single fact——

Q. You don't know that the amount of a certain judgment which was paid was added to what was paid to Charles W. Thomas on that occasion which made it fifty thousand dollars?

A. I know that he told me that rather then to have anything to do with the judgment or to have the sale fall through, he would allow them to deduct that amount and would take that amount for his stock instead of fifty thousand dollars. That is what he told me. I was very much afraid during all that time that something would be done that would prejudice my claim against the railroad company and Mr. Leathe, that I declined at all times, in
142 every way to recognize anything that was done there at that meeting.

Q. You got the money?

A. If I had controlled my stock it would not have been sold for that amount. I would not have permitted any sale of it.

Q. I will ask you if you got anything out of that amount on any of your claims?

A. No, sir, they never paid me a nickel of that amount. They gave Charles W. Thomas $12,700. out of it. If the amount had been $50,000. it would have been $12,250. if he had divided according to the stock we owned. I had nothing to do with that. I owned no stock at all and he could divide it as he saw fit.

Q. How much did you get?

A. I got $28,000. in round numbers.

Q. The balance of the payment went to Charles W. Thomas?

A. That went to Charles W. Thomas.

Q. At the same time Charles W. Thomas assigned to the purchasers of this property all of the stock which had been issued to you and to him?

A. I had assigned to him every bit of it.

Q. He assigned that all?

A. So the record states.

Q. You do not know whether he assigned it all or not?

A. Only by hearsay, Mr. Koerner, I was not there, I know nothing about it.

Q. You say that the assignment is on the books?

A. No, I say that I never saw it on the books, even, I only know it from this writing. He informed me that that was a copy of the contract made. That's all the writing that I have.

Q. So all that was obtained from the purchasers of that property by Charles W. Thomas, above the sum of $28,000.?

A. It is that in round numbers, I do not know exactly, I could tell you by looking it up. It was $28,000. in round numbers.

143 Q. That amount went to you and the balance went to Charles W. Thomas?

A. That is right, I protested against even that, but knowing that I had no legal remedy, I took what he saw fit to give me, being assured that there was nothing done that would affect my claims.

Q. By Mr. Leathe, you mean?

A. No, sir, by Charles W. Thomas. He was not acting as my agent and was not my agent.

Q. If he was not your agent, why did you give him written instructions how he was to act?

A. I gave him written instructions in reference to my wife's land and concerning nothing else, because my wife had transferred to him her stock and I was anxious to see her land cleared of the indebtedness I had raised on it.

Q. Were there any negotiations with you in regard to your transfer of this stock to the purchasers?

A. None whatever.

Q. Prior to the time that the transfer was actually made?

A. None whatever.

Q. Were there any negotiations in regard to what you were to obtain for this stock?

A. At one time Mr. Chipley came to me and asked me what I would take for the stock and I told him he would have to see Charles W. Thomas that Mr. Charles W. Thomas had the stock, had all of it, except these two shares that I spoke of. That was in the summer of 1895 and Mr. Charles W. Thomas told me that he had told Mr. Chipley he would take $50,000. for it.

Q. Did you have any conference at all with Mr. Charles W. Thomas as to how this property was to be sold, what he was to obtain for it?

A. He told me that he had offered it to Mr. Chipley for $50,000., that was about all there was. I knew that was what he was expecting to get for it.

144 Q. And was that figure satisfactory to you?

A. Well, I will tell you, Mr. Koerner, about that. I really thought that if it had been mine I would not have sold at all, I would not have permitted the scheme to go through at all, I would not have permitted the same if it had been mine, that is, without a great many other things being done, I mean the way it was done. I should never have consented to the sale the way it was done if the stock had been mine. Charles W. Thomas had the stock and handled it as he saw fit against my desire in several particulars. Now, in regard to those bonds. I held those bonds back for the purpose of getting the mortgage paid on my wife's land, that had been agreed to be paid a year before, or more; that I did as a matter of protection to my wife's interests.

Q. What bonds are you speaking about now?

A. The coal bonds.

Q. The $5000. coal bonds?

A. Yes, sir, I had put four or five good years into this thing and I never would have sold the stock had I owned it or controlled it without having the entire matter settled up. Nothing could have ever been gotten from me on that stock if that had not been done.

Q. This judgment of about $6000. of which you spoke and which I say was paid out of the $50,000. that went to Thomas in the final disposition of the property to Mr. Gary, was obtained, was it not, on notes which you had given?

A. No, sir.

Q. Well, of course I understand not directly, but it was obtained in an action of trover for conversion of bonds by Mr. Leathe; Mr. Leathe had agreed with the First National Bank of Belleville, they had $90,000. of these first bonds of the $150,000. as security?

A. There were some notes amounting to about $45000.

145 and he was to pay them within six months or deliver them new bonds, $25,000. worth of new bonds of the Belleville & St. Louis Railway or return them the old ones. And within the time fixed in which he had to perform these conditions with the National Bank, he did not give them the new bonds.

Q. One question, Mr. Thomas?

A. This suit was on these bonds upon the theory that they had been tendered back to the Bank and then you refused to give them to them when they made the demand. They recovered the amount for which they had the bonds as collateral.

Q. These bonds, Mr. Thomas, were the $150,000 bonds which it had been agreed should be delivered to him and he could not get them because $90,000. of them had been pledged to the First National Bank.

A. He knew all about it, everything had been told to him.

Q. That was the fact, he could not get them until he went there and made arrangements?

A. I told him what arrangements could be made by the Bank by which he could get them and he went there and made the arrangements with the Bank.

Q. In order to make it possible for you to carry out that part of the contract that he was to have the $150,000. bonds in his possession it was necessary to make the arrangements with the First National Bank, was it not?

A. It was necessary to make some arrangements with them.

Q. For the reason that that bank held these bonds as collateral for some indebtedness of yours to the bank?

A. That was the reason of it. There was an indebtedness of about $4500. upon which a judgment was recovered. The measure of damages was the amount of the indebtedness. The measure of damages that could be recovered was fixed by the Court as being the amount that had been gotten from them.

Q. That is the actual indebtedness of the Bank?

146 A. That is right.

Mr. TURNER (Referee): Did that case go up?

A. No, sir, it was settled before it went up.

Mr. KOERNER: I had a bill of exceptions but the matter was settled before the case was taken up.

Mr. THOMAS: I insisted on Knispel taking it up and urged him all the time but could not get him to do it. I had a very great controversy with the Bank about that.

Q. Now, then, what I am trying to get at is this, that this judgment was paid by Mr. Gary, the purchaser of this property?

A. Mr. Koerner, I do not know anything about that.

Q. You do not know that?

A. No, I do not know, I only know what Mr. Charles W. Thomas told me. He told me that rather than not have this thing go on, he had said to Mr. Gary "You can deduct the amount out of what I am to get, I will take that much less for the stock." And whether it was paid or not, we have nothing to do with it, and do not care anything about it. That is all I know about it.

Q. Is it not a fact that it was paid?

A. I suppose it was, I do not know that now. I do not even know that it was paid.

Q. That amount was your debt?

A. That is what I owed the Bank at that time and what judgment was recovered. They calculated, now, of course, I was not trying the case, I was a witness in it, but that is what I understand.

Counsel for defendant then gave in evidence the following instrument which is referred to by Mr. E. L. Thomas in this cross-examination.

Whereas, Edward L. Thomas has certain claims against the Crown Coal & Tow Company, based upon what he claims

147 to be his portion of the purchase price of certain coal pits which were turned over to said Company by him and his associates, and whereas a partial settlement of the said claims has heretofore been made and certain bonds of said Company were set

aside to Edward L. Thomas as in satisfaction or settlement of a portion of said claims, in consideration of the surrender of whatever interes- in said bonds the said Edward L. Thomas may have; it is agreed by the said Company that any former arrangement or settlement made between the parties, namely said Thomas and said Company growing out of the said transaction, shall be considered as abrogated and annulled and as though it had never been made, and the said Edward L. Thomas shall be relegated to any actions or suits that he may be advised may be proper for the purpose of adjusting and settling the differences between him and the said Company, growing out of the said purchase money or other moneys which he may claim to be due to him on account of the transactions hereinbefore mentioned.

Dated this eighth day of November, A. D. 1895.

CROWN COAL & TOW COMPANY,
By S. H. LEATHE, *President.*

We ratify the above, this November eighth, 1895.

SAM'L LEATHE, *Director.*
JOHN T. TAYLOR, *Director.*
BART S. ADAMS, *Director.*
FRED B. MERRILLS.

Counsel for plaintiff objected to the introduction of the above instrument.

148 Counsel for defendant then gave in evidence the following instrument which is referred to by Mr. Edward L. Thomas in his cross-examination:

Received of Elbert H. Gary as agent for certain principals Forty Four Thousand One Hundred Thirty One 57/100 Dollars in full payment for Ten Hundred and Twenty (1020) full paid shares of the Capital Stock of the St. Louis, Belleville and Southern Railway Company, (formerly the Belleville City Railway Company) and also Four Hundred and Eight (408) full paid shares of the Crown Coal and Tow Company (formerly the Crown Coal Company) and in full payment of all claims aga-nst said companies, or either of them, or their property or any part thereof.

And I do hereby sell, assign and transfer unto the said Elbert H. Gary as agent for certain Principals all and each of the said shares of stock, and direct that certificates of the same be duly issued to them.

And I hereby represent and warrant that I have the full title to and the lawful right to transfer as above all of said stock.

November 8, 1895.

Also agreed to deliver one share in each Co. of Needles.

———.

Counsel for plaintiff objected to the introduction of above instrument.

149 Whereupon the plaintiff to sustain the issues on its part introduced in evidence to the court the following record, to wit:

STATE OF ILLINOIS, *St. Clair County, ss:*

At a regular term of the Circuit Court within and for the county of St. Clair, and State of Illinois, begun and held at the court house, in the city of Belleville, in said county of St. Clair, on Monday, the 18th day of September, A. D. 1893, it being the third Monday of September, A. D. 1893, according to the act of the General Assembly, by the Hon. Alonzo S. Wilderman, one of the judges of the Third Judicial Circuit of the State of Illinois, of which the said county of St. Clair forms a part, the following proceedings were had, to wit:

Present: Honorable Alonzo S. Wilderman, Judge. J. D. Langley, Sheriff. M. W. Schaefer, State's Attorney. Thomas May, Jr., Clerk.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Edward L. Thomas, *per se*, and Knispel & Ropiequet, his attorneys, complains of the Belleville and St. Louis Railway Company, a corporation of the State of Illinois, of a plea of trespass on the case on promises.

For that, whereas, the defendant on the 21st day of August, A. D. 1893, in the county aforesaid, made its certain promissory note by which it promises to pay to plaintiff or order one day after date the sum of fifty-three thousand and twenty-two and twenty-three one-hundredths — ($53,022.23), with interest thereon at the rate of six per cent. per annum from date until paid; by means whereof the defendant then and there became liable to pay to plaintiff the amount of said note, acording to the tenor and effect thereof and being so liable defendant then and there promised to pay plaintiff the said amount according to the tenor and effect of said note.

And whereas also the defendant on the — day of September, A. D. 1893, in the county aforesaid, was indebted to the
150 plaintiff in the sum of — dollars, for goods, chattels and effects before that time sold and delivered by plaintiff to defendant at his request, and in the like sum for goods, chattels and effects before that time bargained and sold by plaintiff to defendant at its request; and in the like sum for work and services before that time done and bestowed, and material for the same work furnished by plaintiff for defendant at its request; and in the like sum for money before that time lent by plaintiff to defendant at

his request, and in the like sum of money before that time paid and expended by plaintiff for the use of defendant at its request; and in the like sum for money before that time received by defendant for use of plaintiff; and in the like sum for interest on divers sums of money before that time forborne by plaintiff to defendant at his request, for divers spaces of time before then elapsed; and in the like sum for money found to be due from defendant to plaintiff, on an account then and there stated between them; and being so indebted, defendant in consideration thereof, then and there promised plaintiff to pay him on request the several sums of money so due him as aforesaid.

Yet, although the day of payment in said note specified has elapsed, the defendant has not paid to plaintiff the amount of said note, or any part thereof, but refuses so to do, nor has the defendant, though requested, paid to plaintiff the several other sums of money above specified, or any or either of them, but refuses so to do.

To the damage of plaintiff of — dollars and therefore he brings this suit, &c.

E. L. THOMAS AND
KNISPEL & ROPIEQUET,
Plaintiff's Attorneys.

Copy of Instrument and Account Sued On.

$53,022.23. BELLEVILLE, ILL., *August* 21, 1893.

One day after date, the Belleville & St. Louis Railway Company promises to pay Edward L. Thomas or order the sum of Fifty-three thousand and twenty-two and 23/100 dollars, with interest thereon at the rate of six per cent. per annum, until paid.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

151 The Belleville & St. Louis Railway Company to E. L. Thomas, Dr.

To Goods & Chattels & delivered.
To Goods & Chattels, & bargained & sold.
To Work & services, materials, &c.
To money lent.
To Money paid and for use of Def't, at its request.
To Money received by Def't for use Plaintiff.
To money due for interest.
To money due on account stated.
Filed Sept. 8, 1893.

THOMAS MAY, JR.,
Circuit Clerk St. Clair Co., Ill.

On the 20th day of September, A. D. 1893, the following plea was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RY. COMPANY.

Assumpsit.

1. Now comes the defendant and says it did not undertake and promise to pay to the said plaintiff in manner and form as the said plaintiff has declared against it, and of this it puts itself upon the country, &c.

2. And for further plea in this behalf as to the first count in the declaration, defendant says *actio non*, because it says, that the supposed promissory note in that count mentioned was made without any good and valuable consideration, and this it is ready to verify, etc.

3. And for further plea in this behalf, defendant says *actio non* as to the first count in said declaration mentioned, because it says that the said Henry M. Needles has no power or authority to execute or sign said note, and this it is ready to verify.

4. And further as to the said first count in said declaration, defendant says *actio non* because it says the said plaintiff, assuming to be and acting as Director, President, General Manager and General Counsel of said defendant, directed said Needles to execute said note in said count mentioned, well knowing the same to be without legal or valuable consideration to the amount for which it is given, which action was in fraud of the rights of said defendants and of
152 its stockholders, wherefore the defendant says said note is wholly illegal and void, and this it is ready to verify, &c.

G. & G. A. KOERNER,
Attorneys for Defendant.

And on the 20th day of September, 1893, the following Affidavit of Merits was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Edward L. Thomas, being duly sworn, upon his oath says he is the plaintiff in the above cause. That the demand of the plaintiff in the above entitled cause is upon the promissory note set forth in

said first count of said declaration, and that there is due to the plaintiff from the defendant the amount of said note, and interest thereon from maturity thereof, at the legal rate, which at this date amounts to the sum of $53,278.50, after allowing all just credits, deductions and set-offs.

EDWARD L. THOMAS.

Subscribed and sworn to before me this 20th day of September, A. D. 1893.

THOMAS MAY, JR.,
Circuit Clerk.

And on the 26th day of September, A. D. 1893, the following "motion to strike from files affidavit of merit," that is to say:

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Now comes the defendant and moves to strike from the files the affidavit of merits filed by plaintiff.

G. & G. A. KOERNER,
Att'ys for Def't.

153 And on the 7th day of October, 1893, the following "affidavit of meritorious defense" was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Samuel H. Leathe, being duly sworn, upon his oath says, that he is agent in this behalf of the said defendant in the above entitled cause, and that he verily believes that the said defendant has a good defense upon the merits to the whole of the demand made by the plaintiff in this suit.

SAMUEL H. LEATHE.

STATE OF MISSOURI, *City of St. Louis:*

I, C. D. Greene, Jr., a notary Public, in and for said city and state, do hereby certify that by virtue of the laws of the State of

Missouri, I have authority to administer oaths, and that Samuel H. Leathe on this 26th day of September, 1893, appeared before me in person and subscribed and swore to the above affidavit. Term ends June 30, 1897.

[SEAL.]

C. D. GREENE, JR.,
Notary Public.

And on the 31st day of October, the following replication was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY.

Assumpsit.

And the plaintiff as to plea of defendant first above pleaded, and of which he puts himself upon the country, does the like.

And as to second plea of defendant above pleaded, plaintiff says that he ought not to be barred from having his aforesaid
154 action, etc., because he says that the said promissory note was made and given for a good and valuable consideration and not without consideration as the plaintiff has in his plea alleged; and this he prays may be inquired of the country.

And as to the third plea of defendant above pleaded, plaintiff says he ought not to be barred, etc., because he says that the said note was not executed by said Needles without the power and authority as defendant has alleged, and this he prays may be inquired of by the country.

And as to the fourth plea of defendant above pleaded, plaintiff says that he ought not to be barred, etc., because he says that he, the plaintiff, did not, assuming to act as director, president, general manager and general counselor of defendant, direct said Needles to execute said note, well knowing the same to be without legal and valuable consideration, and in fraud of the rights of defendant and its stockholders as defendant has in said plea alleged, and this he prays may be inquired of by the country.

And the plaintiff, by leave of court, etc., replying to said fourth plea of defendant says, that he ought not to be barred by reason of anything in said plea alleged, because he says that the execution of said promissory note was obtained fairly and not by fraud and circumvention of plaintiff, as in said plea alleged, and this he prays may be inquired of by the country, etc.

By KNISPEL & ROPIEQUET,
Att'ys for Plaintiff.

And on the 9th day of November, A. D. 1893, the following "Demurrer to Replication" was filed, that is to say:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Now comes the said defendant and says the several replications to the additional plea of defendant are each and all insufficient in law, etc.

G. A. KOERNER,
Att'y for Def't.

155 And on the 8th day of November, A. D. 1893, the following additional plea was filed, that is to say:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY CO.

Assumpsit.

Additional Plea.

And for further plea in this behalf, defendant says *actio non*, because it says that heretofore, to wit: on the 24th day of January, A. D. 1893, the said defendant was a railroad corporation, with a nominal capital stock of $500,000, divided into 5,000 shares of $100 each, which shares according to the books of the said corporation were then held as follows, viz:

Edward L. Thomas, plaintiff in the suit	4,856	shares.
Bart S. Adams	62	"
John T. Taylor	50	"
Henry M. Needles	21	"
Alpheus Boling	1	"
Josephine Johnson	10	"
	5,000	"

Defendant further avers that afterward, viz: on the day and year last aforesaid, it was agreed by all the parties interested in said enter-

prise to acquire the charter of the Belleville City Railway Company, and under its charter construct the railroad theretofore contemplated to be constructed under the charter of the Belleville & St. Louis Railway Company, the said parties to the contract above set forth to have the same proportionate stock, and the said contract made in reference to the capital stock of the said Belleville & St. Louis Railway Company to be in force and govern.

And defendant states that the said Belleville City Railway Company has made bonds to the amount of $500,000, as provided by said contract, and that the sums due to said Edward L. Thomas for moneys expended in the construction of said railroad, which is the same amount sued for in this action is payable according to the terms of said agreement, and not otherwise.

156 And defendant alleges that since the making of said contract, said Leathe has proceeded to carry out the same in good faith, has with his own means purchased real estate for terminals and right of way, and has expended large sums of money in the construction of said railroad, for which he has not been reimbursed, the sum thus expended by him amounting to, viz: $100,000.

And this the defendant is ready to verify, wherefore, etc.

G. & G. A. KOERNER,
Att'ys for Def't.

And on the 23d day of November the following "6th plea" was filed, that is to say:

And for a further plea in this behalf, the defendant says that at the time the said note was given, viz: on the 21st day of August, 1893, the said defendant was not indebted to the plaintiff to the amount of said note, but to a less amount, viz: the sum of $5,000, and no more, and the directors of said company well knew said fact, and the said note was made in fraud of the said company and its stockholders, and this the defendant is ready to verify, wherefore it prays judgment, etc.

G. & G. A. KOERNER,
Att'ys for Def't.

And on the 24th day of November, A. D. 1893, the following "Replication to 5th and 6th pleas" was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

And the plaintiff as to the 5th plea of the defendant says *precludi non*, because he says that the said supposed contract in said plea

set forth was not executed by the said supposed parties thereto at the time and place, etc., and *of* this the plaintiff prays may be inquired of by the country.

By KNISPEL & ROPIEQUET,
His Attorneys.

And the plaintiff for further replication to said plea, by leave of court, says *precludi non*, because he says that it is true, as alleged in said plea, that the said contract in said plea set forth was duly executed by said parties at the time when, etc., but plaintiff avers
157 that afterwards, to wit: on the 25th day of March, A. D. 1893, at, to wit: the county aforesaid, said contract was by said parties thereto, set aside, annulled and abrogated, and this the plaintiff is ready to verify, wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And for further replication to said plea by leave of court, plaintiff says *precludi non*, because he says that said contract has not been performed by the said Leathe and Chipley, but has by them been wholly abandoned and disregarded, and the said Leathe has entered into such other contracts as to render it impossible to carry out said contract, by reason whereof plaintiff avers that he is wholly discharged from the observance of the terms of said contract, to wit: at the county aforesaid, and this the plaintiff is ready to verify; wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And for further replication to said plea, the plaintiff, by leave of court, says, *precludi non*, because he says that after the time shown, etc., to wit: on the 25th day of March, 1893, said parties to said contract annulled and abrogated the same, and on said day, to wit: at the county aforesaid, said defendant, by resolution of its said stockholders, sold and conveyed all its property, to wit: said right of way and grading in said plea set forth to Samuel H. Leathe in consideration that said Leathe should pay the indebtedness of said Belleville and St. Louis Railway Company which said Leathe agreed to do, and said Leathe conveyed the same to the said Belleville City Railway and that the said Leathe and the said Belleville City Railway then and there entered into the following contract, that is to say:

"At a meeting of the directors of the Belleville City Railway Company, held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25, 1893, the following proceedings were had, all the directors being present.

Mr. Bartlett S. Adams was elected president of the Company, and Mr. Charles W. Thomas, secretary. Mr. Taylor introduced the following resolution and moved its adoption:

Resolved, That a call of one hundred per cent. be made upon the capital stock of this company, payable on or before May 1, 1892, and that the secretary be directed to give written notice of this call to all the stockholders within twenty days. Mr. E. L. Thomas seconded the motion, and it was unanimously adoped. Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of $499,500 certain property described and referred to in his deed to the company of this
158 date, which was produced, but which was not delivered. Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give this company credit on said purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of its stock he may hereafter acquire and may credit on said stock calls the value of the services he may hereafter perform in floating this company's bonds and also the indebtedness due him from the company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted.

Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the company 4,995 shares of the capital stock of the company, subject to the calls made thereon, to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made at this meeting upon his 4,995 shares of the stock of this company upon the condition that he float the $500,000 of bonds of this company heretofore authorized to be issued, any of such bonds that he sells to net this company such a price as may hereafter be agreed upon between him and the board of directors of this company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the company to be accounted for by him at par, to the end that the railway of this company may at once be constructed and operated from some point within the original City of Belleville to the Mississippi river; and upon the further condition that Mr. Leathe protect this company from any decree foreclosing the mortgage to secure said bonds until one year after its said railway is in operation and that Mr. Leathe be requested to sign the record of the proceedings of this board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion and it was unanimously adopted.

I accept the terms of the foregoing resolution.

(Signed) SAMUEL H. LEATHE.

And the board adjourned to meet subject to the call of the president.

BART S. ADAMS, *President.*
CHARLES W. THOMAS, *Secretary.*

And plaintiff avers that said Mr. Chipley, Thomas and Adams then and there consented to the execution of said contract, by reason

whereof, the said contract in said plea mentioned, was then
159 and there rendered impossible of performance and was then and there annulled and abrogated, to wit: At the county aforesaid, all of which the plaintiff is ready to verify, wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And as to said sixth plea plaintiff says, *precludi non*, because he says said company was not indebted to said plaintiff only in the sum of $5,000 as in said plea alleged, and this he prays may be inquired of by the country, etc.

By KNISPEL & ROPIEQUET,
His Attorneys.

And on the 27th day of November, 1893, the following "demurrer to amended replication to fifth plea and to replication to sixth plea" was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. L. RY. COMPANY.

Assumpsit.

1. Now comes defendant and demurs to the first amended replication of plaintiff to the defendant's fifth plea, and for special cause for demurrer says said replication presents an immaterial issue.

2. And demurs to the second replication to said fifth plea, and for special cause says, said plea does not set forth in what manner said contract mentioned in said plea was abrogated, etc.

3. And demurs generally and specially to the third replication to the said fifth plea, special causes: 1—Said replication is double. 2—Does not show what contracts were made by said Leathe, or to carry out said contracts. 3—That it does not show with whom such contracts were made.

4. And demurs to the fourth replication to the fifth plea, and says the matters therein set forth are no answer to the said plea, and are not of a nature to avoid the contract set forth in said plea. And defendant says the replication filed to plaintiff's sixth plea is not sufficient in law, and prays judgment, etc.

G. & G. A. KOERNER,
Defendant's Att'ys.

160 EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RY. CO.

Assumpsit.

And now, on the 20th day of September, A. D. 1893, come the parties by their respective attorneys, and leave is given the plaintiff to file an affidavit of merits with his declaration instanter, which is filed accordingly. On the 27th day of September, 1893, come again the parties by their attorneys, and time to plead is extended. On the 6th day of October, 1893, come again the parties by their attorneys and defendant's motion to strike affidavit of merits from the files is argued by counsel for the respective parties, and is by the court denied. And the court enters a rule on defendant to plead by October 10, 1893. On the 8th day of November, 1893, come again the parties by their attorneys, and leave is given defendant to file an additional plea, which is filed, and leave is given plaintiff to reply double. On the 10th day of November, 1893, come again the parties by their attorneys, and plaintiff's demurrer to additional plea is argued by counsel for the respective parties, and is by the court sustained, and leave is given to amend. And now, on the 28th day of November, 1893, come again the parties by their attorneys, and all pleas, except the general issue, *is* withdrawn, and all evidence to be given under that plea, and thereupon this cause is tried by the court by consent of parties, a jury being waived, and trial continued until December 13th, 1893. On the 13th day of December, 1893, come again the parties by their respective attorneys, and the trial of this cause is resumed, and the trial progresses, and the court, after hearing the evidence and arguments of counsel, and being fully advised in the premises, on the 21st day of December, 1893, the court finds amount due plaintiff to be fifty-three thousand and twenty-two ($53,022.23/100) dollars and twenty-three cents, whereupon the defendant moves the court for a new trial of this cause, which is argued by counsel for the respective parties, and is by the court taken under advisement to be decided as of this date. And now, on the 12th day of February, A. D. 1894, come again the parties by their respective attorneys, and the defendant's motion for a new trial heretofore taken under advisement on the 21st day of December, 1893, is by the court denied. It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the said defendant the said sum of fifty-three thousand and twenty-two ($53,022.23/100) dollars and twenty-three cents,
161 together with the costs in this behalf expended, and that execution issue therefor, said judgment to take effect as if rendered on the 21st day of December, A. D. 1893.

(To all of which the defendant excepts and prays an appeal to the Appellate Court of Illinois, in and for the fourth district, which is allowed upon the defendant filing its appeal bond in the penal sum of sixty thousand dollars, with security to be approved by the clerk of this court.)

Bond and bill of exceptions to be filed by February 24, 1894, and afterwards the court extends the time for filing appeal bond to February 24, 1894, and for filing bill of exceptions to March 13, 1894.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., clerk of the Circuit Court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of: 1. Declaration. 2. Defendants' plea. 3. Affidavit of Merits. 4. Motion to strike affidavit of merits from files. 5. Defendants' affidavit of meritorious defense. 6. Replication. 7. Demurrer to Replication. 8. Additional Pleas. 9. Defendants' 6th Plea. 10. Replication to 5th and 6th Pleas. 11. Demurrer to Amended Replication. 12. Order of the September Term, A. D. 1893, (the same being in the case of Edward L. Thomas *v.* The Belleville Ry. Co., being a complete record as the same appears on file of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Belleville, this 2d day of February, A. D. 1895.

THOMAS MAY, JR., *Clerk,*
[SEAL.] By PHIL. H. SOPP, *Deputy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

I, A. S. Wilderman one of the judges of the Third Judicial Circuit of the State of Illinois, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing Certificate of Attestation, now is, and was at the time of signing and sealing the same, clerk of the Circuit Court of St. Clair County, aforesaid, (which county is in said Judicial Circuit) and keeper of the records and seal thereof duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere, and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 2d day of February, A. D. 1895.

A. S. WILDERMAN. [SEAL.]

162 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., clerk of the Circuit Court, in and for said county in the State aforesaid do hereby certify that A. S. Wilderman, whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, one of the judges of the Third Judicial Circuit of the State of Illinois (of which Judicial Circuit the said St. Clair county forms a part), duly commissioned and qualified; that full faith and credit are and of rights ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said Court, at my office in Belleville, this 2d day of February, A. D. 1895.

THOMAS MAY, JR., *Clerk*,
[SEAL.] By PHIL. H. SOPP, *Deputy*.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court in and for said County in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of the record in the case of Edward L. Thomas *vs.* The Belleville & St. Louis Railway Co. certified to by the clerk of the St. Clair County Circuit Court on the 2nd day of February, 1895.

In Testimony Whereof, I have hereunto set my hand — affixed the seal of said Court at my office in Belleville this 16th day of June, A. D. 1898.

THOMAS MAY, JR., *Clerk*,
By PHIL. H. SOPP, *Deputy*.

163 & 164 STATE OF ILLINOIS, *St. Clair County, ss:*

At a Regular Term of the Circuit Court within and for the County of St. Clair and State of Illinois, begun and held at the Court House, in the City of Belleville, in said County of St. Clair, on Monday the 8th day of January A. D. 1894, it being the Second Monday of January A. D. 1894, according to the Act of the General Assembly, by the Hon. Alonzo S. Wilderman one of the Judges of the Third Judicial Circuit of the State of Illinois, of which the said County of St. Clair forms a part the following proceedings, were had, to-wit:

Present: Honorable Alonzo S. Wilderman, Judge. J. D. Langley, Sheriff. M. W. Schaefer, State's Att'y. Thomas May, Jr., Clerk.

165 STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court of said County, January Term, A. D. 1894.

SAMUEL H. LEATHE, THE BELLEVILLE AND ST. LOUIS RAILWAY CO., THE BELLEVILLE CITY RAILWAY CO.

vs.

EDWARD L. THOMAS.

Bill for Injunction and Relief.

To the Honorable Judge of said Court, in Chancery sitting:

Your orators, Samuel H. Leathe, the Belleville and St. Louis Railway Company, the Belleville City Railway Company, respectfully show unto your Honor:

1st. That the Belleville City Railway Company is a corporation chartered by special act of the General Assembly of the State of Illinois, approved —— —, 1867.

2d. That the Belleville and St. Louis Railway Company was

a corporation organized under the general laws of the State of Illinois.

3d. That the latter company, as organized originally consisted of a capital stock of $50,000, which was subsequently, by the action of the stockholders, increased to $100,000, and still later to $500,000. At the time the capital stock of said company was at $50,000 it had been subscribed for as follows:

Edward L. Thomas held	495 shares
Henry M. Needles held	1 share
John T. Taylor held	1 share
John P. Hill held	1 share
Alpheus Boling held	1 share
Bart S. Adams held	1 share
Total	500 shares

4th. By resolution of the board of directors, authorized by meeting of stockholders, both held September 10, 1891, the capital stock of the said (latter) company was increased to $100,000, and Edward L. Thomas subscribed for 500 shares of the additional stock.

5th. By resolution of the stockholders, or, rather, subscribers to the capital stock of the said corporation, on the 27th day of October, A. D. 1892, and further by resolution of the board of di-
166 rectors of said corporation held November 28, 1892, it was resolved to increase the capital stock of said corporation to the sum of $500,000, and on that day the said Edward L. Thomas subscribed to 3,980 additional shares of said stock, and one Henry M. Needles to twenty shares.

6th. Your orators distinctly allege that none of said stock thus subscribed was ever paid into the treasury of said company.

7th. Your orators further state that it was the intention of the promoter of this corporation, Edward L. Thomas, to construct and equip a railroad from the City of Belleville, Illinois, to some point on the Mississippi river opposite to the city of St. Louis.

9th. That the said Edward L. Thomas had made some progress in the construction of said railroad; had purchased some rights of way and graded some portions of the road bed, for which purposes he had expended some money, although to what amount your orators are unable to state, and created some considerable indebtedness, both individually and for said corporation, the amount of said indebtedness your orators are unable to state.

10th. That the said Edward L. Thomas had interested one W. A. Adams in said enterprise, who is now deceased, and said Adams, during a period of time running from the 1st of September, 1890, to the 1st of April, 1891, had expended for the purchase of lands for right of way and perhaps other purposes, and the grading of the road-bed, a sum, the exact amount of which is unknown to your orators, but which they state upon information and belief to exceed $20,000.

11th. That about the first of the year 1893, the said Adams then having died, the condition and prospects of said corporation became

desperate, and there was imminent danger of the entire amount invested therein being lost, the said Thomas having expended in its behalf all he had or could obtain or borrow from others, and it being impossible for him to sell or pledge for value any of the bonds which had been issued except as hereinafter stated.

12th. That about that time or shortly before, your complainant, who is a citizen of the State of Missouri, residing at St. Louis, was approached by agents of said Thomas and solicited to take an interest in said enterprise, and began to investigate it, and on the 12th day of January, A. D. 1893, the said Edward L. Thomas addressed a letter to your orator, Samuel H. Leathe, which was duly received by him, and which is as follows:

167 BELLEVILLE, ILL., *January 12th*, 1893.

Samuel H. Leathe, Esq.

DEAR SIR: Herewith is presented an itemized account of money expended in the matter of the Belleville & St. Louis Railway Company by Captain W. A. Adams and Edward L. Thomas.

The amount in account with organization is some $1,200 less than account first rendered, because of the leaving off of fee of trustee for new bonds amounting to $500 and engraving new bonds of $475 and adding some small new items accruing in this month. The amount of sundries is increased by some $500 by items new for this month and fee of Mr. C. P. Knispel, overlooked and really agreed upon since making statement.

The amount of right of way is decreased by amounts charged for right through lands purchased by me and which I supposed would be retained by me, but upon conversation with you I have put into the account, and deducted the amount charged for right of way.

The amount of construction account is the same as rendered. The amount of coal lands is increased by interest for one month, bringing it up to Jan. 1, 1893.

The land account is added, and if thought best, the land will be transferred to the company. There are incumbrances on the land amounting to $3,500 which must of course be paid by me if land is taken by the company.

The land is suited to our purposes and I am willing to deed it or retain it, charging me with what company owes for it. I have of course put in sums not yet liquidated by me but which can either be assumed by the company or paid by me as per account and which I will then pay. This is particularly so in right of way account.

The late grading is estimated but on consultation with the engineer, we concluded it was about right. Of course this is to be calculated and charged according to calculation. It will, however, not exceed amount stated and will likely run several thousand yards below the estimated quantity.

The right of way contracts are binding upon me, but it makes no difference as to how they are changed or when paid, the right will be granted and no loss can result to the company either by crediting me or assuming payment itself.

In this connection let me add, that several of the contracts were so drawn that no right of way was to be paid if coal was purchased, and I believe that nearly all can be done away with, if coal is taken and one-fourth cash paid for it.

The coal account is as mentioned in the same condition. Mortgage and notes given by me and still to be paid.

168 There are no outstanding debts of the company but $3,000 advanced me by parties with whom I had a contract. Four notes were given and the understanding is that they are not to be paid until the enterprise is on its feet or bonds sold. One note of $750 as I mention has two bonds up as collateral, and to get these bonds will have to be paid.

Everything I could raise has been put into this enterprise and many shifts made in order to continue along so as to complete the grading.

I have deserted my business since January, 1890, and while I do not ask for any compensation for the services performed, I am satisfied the enterprise has been carried on and brought to its present stage for less money than any other enterprise of a like nature. In the right of way above we have saved over one-half, and while our grading costs considerable when it is considered that it is nearly of a width for two tracks in all the heavy work it will be found to be reasonable.

I do not desire to make one cent out of this enterprise except by its operation and feel confident that the amount I shall receive will not more than pay obligations incurred in this work.

I have not added the $16,000 for my coal but am ready to comply with my contract as regards that matter at any time if it is thought best when a final consultation is had.

I am willing to abide by this statement and will make any necessary instruments to carry it out, leaving in your hands funds that would come to me, until all matters are paid and satisfied, so that the company would be kept whole.

The proposition which I now make will leave you individually $255,000 of the R. to stock myself and Bart S. Adams $166,700, and Mr. Chipley the balance, or $78,300. This proposition to be maintained in any other company formed or purchased.

Out of amount to Bart Adams and myself, we have some to surrender to others. Of course you would want to be treasurer, and would perhaps like to have Mr. Chipley president. This can be arranged to your satisfaction, and three directors, yourself, Mr. Chipley and Bart from St. Louis; and four, Mr. Taylor, Mr. Needles, our present secretary, myself and Mr. Boling from Illinois, as the law requires a majority to live in that state. I feel confident that we can make a success of this enterprise and hope you will conclude to take hold of it and complete it. Having everything I have in it, I feel that I am unable to carry it much further, and have largely incurred the liabilities I have, because of my desire to prevent loss to the heirs of Capt. Adams, to whom I was under great obligations for kindness done and favors shown me.

Respectfully, etc.,

(Signed) EDWARD L. THOMAS.

169 13. That thereupon, to wit: on the 24th day of January, A. D. 1893, the negotiations carried on between the parties then interested primarily in said enterprise, viz.: the said Edward L. Thomas and one Bartlet S. Adams, who was representing the estate of his father, W. A. Adams, above mentioned, entered into an agreement in writing with your orator, Samuel H. Leathe and one Lucien M. Chipley, which is in words and figures as follows, to wit:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 5 per cent. bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750 with interest, in St. Louis.

Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas.

Edward L. Thomas to have $104,000 of stock; Bart S. Adams, $50,000; and John T. Taylor, $12,700; each party to receive back amounts advanced to the enterprise as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered, and said Leathe to receive amount to be advanced by him and balance to go into treasury of the railway company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

Dated Jan. 24, 1893.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement, I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the statements made in my letter to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24, 1893.

(Signed) EDWARD L. THOMAS.

170 14. Your orators further show that said Leathe on his part proceeded at once to carry out said agreement. That he did advance the amount necessary to take up four bonds of the company then held by Mrs. Johnson, viz.: $1,500 and Third National Bank (St. Louis, Mo.) $750.

15. Your orators further show that when said Leathe asked for

the transfer to him of the shares of the stock to which he was entitled by said agreement, the following state of facts developed:

There had at no time been issued by said company, more than one thousand shares of capital stock of one hundred dollars each, and said capital stock was practically all in the control, and in the name of the said Edward L. Thomas and one Bart S. Adams, except ten shares held by one Mrs. Johnson. Of this amount in carrying out said agreement, the said Bart S. Adams delivered to your orator Leathe, 100 shares, and the said Edward L. Thomas claimed to own 875 shares, which he attempted to deliver to said Leathe, but failed, inasmuch as the Third National Bank of St. Louis, when said bonds were deposited, declined to deliver them to the said Thomas or at his request to your orator Leathe, and your orator S. H. Leathe is the equitable holder of all of said shares, and now in posesssion thereof.

And your orators allege that the fact that by the resolutions of the stockholders and board of directors hereinabove referred to, the capital stock of said corporation was increased, first to one hundred thousand dollars, and then to five hundred thousand dollars, is of no significance or importance, inasmuch as said increase was all or practically all subscribed for by said Thomas, and he and said Adams were the only persons who had any substantial interest therein, and their contract with said Leathe, above set out, covered all the stock of said corporation, be it $50,000, $100,000, or $500,000, the purpose and effect of said contract being to convey two-thirds of the capital stock issued or not issued, *to* said Leathe and Chipley.

And your orators further show, that, by said contract, he, said Leathe, became the equitable holder of all of the stock held by the said Thomas and said Adams, and that by the expression in said contract, or in the addition thereto, wherein the said Thomas agrees to leave in the hands of the said Leathe all sums coming to him as guarantee of the statements made in his letter of January 12th, and as security to hold until all matters are fully arranged, meant that all bonds, stocks and other papers of value, belonging to him, and having reference to or connection with, said enterprise, should remain with said Leathe.

16. And further your orators show, that said Leathe has energetically proceeded, since the making of said contract, to carry
171 out the provisions thereof; that he at once began the necessary purchase of real estate for terminals and further right of way, and in constructing the railroad, and has thus expended and incurred personal obligations for said purposes, a large sum of money, viz.: more than one hundred thousand dollars.

17. Further your orators show, that, subsequent to the making of this contract, it was determined by all the parties interested in said enterprise to acquire a charter, granted by the General Assembly of the State of Illinois, by an act approved —— ——, 1867, incorporating the Belleville City Railway Company, which charter your orator, Leathe, was informed was wholly owned and controlled by one Charles W. Thomas, brother of the said Edward L. Thomas. Said Leathe, while he assented to the purchasing of this charter, de-

clined to pay anything, either in money or in stock or in bonds therefor, but was willing to substitute the said charter to the charter of the Belleville and St. Louis Railway Company, which had been chartered under the general law.

The nominal capital stock of the Belleville City Railway Company had been fifty thousand dollars, divided into five hundred shares of one hundred dollars each; but in order to equalize it with the nominal capital stock of the Belleville & St. Louis Railway Company, which, as before stated, had been increased by resolution to $500,000, the said Charles W. Thomas, controlling the Belleville City Railway Company, caused resolutions of stockholders to be prepared and spread upon the record books of said company in due form of law increasing the capital stock of said corporation to $500,000, and himself subscribed for the remaining 450,000 dollars. This was done on the eleventh day of March, A. D. 1893.

18. Thereupon, in pursuance of the plan thereafter to carry on the enterprise of constructing, equipping and operating said railroad between the City of Belleville and the Mississippi River, certain formal proceedings were had by the board of directors of said corporation, which were rendered necessary in order to place the legal title to the property in conformity and in accordance with the change by which the said Belleville and St. Louis Railway Company deeded all its property to your orator, Leathe, and he in turn deeded the same to the Belleville City Railway Company. Copies of said deeds are hereby submitted as Exhibits "A" and "B" respectively, and made a part of this Bill of Complaint.

19. And your orators further state, that on the 25th day of March, A. D. 1893, the said Charles W. Thomas assigned 4,995 shares of the capital stock of the Belleville City Railway Company to your orator, Leathe, and immediately thereafter, and as provided for by said contract hereinbefore set out, between said Leathe, Chipley, Thomas and Adams, the said Leathe, your orator, assigned
172 to said Edward L. Thomas sufficient of the shares of the capital stock to make his holding 770 shares, and to said Charles W. Thomas sufficient of said capital stock to make his holding 250 shares, or together 1,020 shares, of the value of, at par, $102,000, substantially the amount agreed upon by and between said parties in said contract, as the proportion in which the stock should be held; the transfer of stock to said Charles W. Thomas being made at the request of said Edward L. Thomas, and representing part of the consideration paid to said Charles W. Thomas for the use of the charter of the Belleville City Railway Company, which the said Edward L. Thomas agreed should be paid for out of his stock. And further, your orator, Leathe, then and there assigned, in conformity with said contract to Bartlett S. Adams, sufficient shares to make his holding $50,000 at par value of said stock, and to Lucien M. Chipley $78,300 of said stock at par value, that is to say 783 shares, and that the said Leathe, your orator, and the said Chipley, became the holders of two-thirds of said capital stock and said Thomas and Adams of one-third, carrying out the said contract in letter and spirit.

20. Your orator further shows that certain formal proceedings were had at meetings of stockholders and directors of the said corporations, on the 25th day of March 1893, the exact wording and form of which is set forth in Exhibit "C" to this Bill, which is made a part hereof, and reference thereto hereby made; also Exhibit marked "D" which is made a part hereof and reference thereto hereby made.

Exhibit marked "C" contains the action of the stockholders and Directors of the Belleville and St. Louis Railway Company and Exhibit marked "D" contains the action of the stockholders and Board of Directors of the Belleville City Railway Company, and your orator Leathe states that he left the formulation of the words to be used in transacting such formal business, to said Edward L. and Charles W. Thomas, who are both learned in the law, but he alleges that neither in intention or act did the said proceedings change or in any manner affect the position *inter sese,* which was fixed and determined by the said contract of January 24th, 1893, under which your orator Leathe had theretofore proceeded and has since proceeded in good faith and with all possible energy.

21. Further, your orator Leathe shows unto your Honor, that he has as controlling the said Belleville City Railway Company, caused bonds in the sum of $500,000.00 to be executed, and a mortgage to be executed by said corporation to secure the same, but your orator (Leathe) further shows that since the first day of May of this year the condition of the money markets of the country have been unfavorable to the selling or placing advantageously securities of this character, and none of said bonds are as yet sold.

173 22. Your orators further show that at the time the said contract was made, hereinbefore set forth, there was in existence a corporation formed under the general laws of the State of Illinois, called the Crown Coal Company, the Capital Stock of which was owned and controlled by the said Edward L. Thomas, Bart S. Adams and one John T. Taylor. The capital stock of the said corporation was nominally $30,000.00, which according to the record books of said corporation was held as follows: each share at par being one hundred dollars:—

Edward L. Thomas held	58 shares
Bart S. Adams held	118 shares
John T. Taylor held	48 shares
Said three parties jointly held	76 shares.
Total	300 shares.

And it is claimed by said parties that there had been paid in (actually) upon said capital stock as follows:

Edward L. Thomas	$600 00
John T. Taylor	500 00
Bart S. Adams	6,300 00
T. A. Meysenburg	1,500 00
Total.	$8,900 00

The stock of said Meysenburg had however been acquired by said Thomas, Taylor and Adams. And your orators allege that the property and capital stock of said corporation was included in and made a part of the subject-matter of said contract of January 24, 1893; and it was determined to increase the capital stock of said corporation to the sum of $200,000.

23. Further, your orators show that your orator Leathe had acquired by his own means large tracts of coal lands and several tugs, boats and barges plying the Mississippi river, expending large sums of money therefor, to wit: about $100,000, and on the 25th day of March, A. D. 1893, the capital stock of said Crown Coal Company was, by regular action of its stockholders, increased to $200,000, and your orator Leathe became a subscriber to the amount of 1,700 shares, of the par value of $100, and the name of the corporation was changed to the Crown Coal & Tow Company, the said tugs and barges having been acquired from a corporation known as the Western Coal & Tow Company, a corporation the business of which it was desired to continue by the new company. And by resolution of the shareholders, duly passed and recorded in the office of the Secretary of State of Illinois, and in the Recorder's office
174 of St. Clair County, Illinois, the objects of the Crown Coal & Tow Company, which therefore had been confined to the mining and selling of coal, was enlarged to include the power and authority to manufacture and sell electricity and electric light and power of all kinds; and the power to manufacture and sell ammonia, gas and all other products of bituminous coal, and the power and authority to tow boats and barges and transport coal and other freight on the Mississippi river and its tributaries, and charge and collect toll therefor, and to deal in sand, to mine and deal in clay and to manufacture and sell products thereof, and to quarry and deal in stone and rock.

24. Further, your orators show that on the 25th day of March, A. D. 1893, the same day the transfer hereinbefore set out between said railroad companies and said Leathe were made, he, the said Leathe, transferred all his purchases made on behalf of said coal enterprise to the said Crown Coal and Tow Company, and assigned the capital stock which he had subscribed to the various parties in the same proportion as they held the stock of the said Belleville City Railway Company, all in accordance and in performance of the said agreement and contract of January 24, 1893, which form and still forms the basis of the rights of the parties interested in said companies as between themselves. Your orator Leathe has, therefore, now invested in said Crown Coal & Tow Company the sum of about $100,000, while accepting as true the statement found in the record book containing the minutes of the Crown Coal Company, the said Thomas, Taylor and Adams have together invested $8,900, of which amount your orator Leathe furnished to them the sum of $4,500, which they still owe him. And your orators show that the said Edward L. Thomas, on an investment of $600 and that part of the $4,500, which may be as between the said parties equally due from him on the amount borrowed from your orator, yet is holder,

as per the books, of 328 shares of stock of said Crown Coal & Tow Company (except so much thereof as he has since transferred to his wife, Mary O. Thomas), and on his account your orator also transferred to said Henry M. Needles 8 shares, and to Charles W. Thomas 100 shares, making in all 416 shares held by him or transferred to others on his account, on the books, on the nominal investment made by him.

25. Your orators further show that notwithstanding the premises, after the said contract had been made, and after your orator Leathe had become the equitable owner of all the capital stock, that the said Thomas had theretofore held in the said Belleville & St. Louis Railway Company and of the stock of the said Bart S. Adams in said company, in fact the owner and holder of all said capital
175 stock of the Belleville & St. Louis Railway Company; and after the deed had been made by which the legal title of the property of said corporation had been passed to the Belleville City Railway Company in manner and for the purposes hereinbefore set forth, to wit: on the 21st day of August, 1893, the said Edward L. Thomas caused a fraudulent meeting of the former directors of said Belleville & St. Louis Railway Company to be held, and caused a resolution to be passed, among other things directing the secretary of said company, (and one Henry M. Needles was acting as such), to execute and deliver to said Edward L. Thomas the promissory note of said company for the sum of $53,022.23, due one day after date and bearing interest at the rate of six per cent. from maturity. The said Needles thereupon executed and presumably delivered to said Edward L. Thomas a paper writing, of which the following is a copy:

$53,022.23. BELLEVILLE, ILL., *Aug.* 21, 1893.

One day after date The Belleville & St. Louis Railway Company promises to pay to Edward L. Thomas or order, the sum of Fifty-three thousand and Twenty-two 23/100 Dollars, with interest thereon at the rate of six per cent. per annum until paid.

THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

26. Your orators allege and specifically charge that said action of the persons claiming to act as the Board of Directors, who were Edward L. Thomas, John T. Taylor, Henry M. Needles, Alpheus Boling and Bart S. Adams, was void; that they acted without power or shadow of authority; that neither of them had any substantial interest in the corporation for which they were then pretending to act. And your orators further charge that said action was fraudulent inasmuch as the Belleville & St. Louis Railway Company at the time of such action was not indebted to said Edward L. Thomas to the amount of said note. And your orators further show that whatever amount the said Thomas may have had a just claim against the Belleville & St. Louis Railway Company for money expended and labor on account of the construction of said railroad he has no claim

which is now due or enforcible against said railroad, and he should not be allowed to procure judgment thereon, because all such claims were by the terms of said contract hereinbefore recited to be adjusted in a manner satisfactory to the parties interested therein, to wit: the said Belleville & St. Louis Railway Company, Samuel H. Leathe, Bart S. Adams and the said Edward L. Thomas, and that the amount when so ascertained and adjusted was to be paid under the terms and conditions of said contract out of the proceeds of the bonds to be issued by said company, after and subject to the payment
176 from the same source, of any and all sums which might be expended by your orator, Samuel H. Leathe in completing the construction of said railroad. And your orators aver that under the terms and conditions of said contract, the said sums so laid out and expended by the said Thomas and constituting part of the consideration for said note which is not *per se* fraudulent, were not to be a charge or claim against said railroad company or its assets and effects, until all amounts laid out and expended by your orator, the said Leathe, in furnishing and completing the construction of said railroad, should be paid; and your orators aver that the claim of the said Edward L. Thomas for money so laid out and expended by him, whatever the amount, is subject to and is postponed by virtue of said contract, to the claim of your orator Leathe, for moneys expended and to be expended in building and equipping said road, and is payable only after adjustment, out of the proceeds of the bonds of said railroad company, as hereinbefore set forth, and after the satisfaction of all claims due your orator Leathe, for money by him advanced or to be advanced for the building and equipment of said railroad.

And your orator, Samuel H. Leathe, shows to your Honor that in furtherance of said enterprise and for his own protection and that of his associates, including the said Edward L. Thomas, he proposes as soon as the condition of the market allows, to use all energetic means to realize on said bonds.

And your orators charge that all said persons who as directors pretended to authorize the execution of said note, were cognizant of the facts above set forth, and as one instance to show this your orators allege that the said Alpheus Boling has brought suit against the Belleville City Railway Company to recover in his own name the sum of $6,000, which sum is also included in the said claim of Edward L. Thomas.

27. Further your orators show that the said Edward L. Thomas has commenced a suit at law against the said Belleville and St. Louis Railway Company in this court, in which he seeks to recover on said note and on the common counts.

28. Further your orators show that assuming to act with the approval of said persons pretending to act as directors, the said Edward L. Thomas has filed a Bill in Chancery in this court in the name of the Belleville and St. Louis Railway Company; to which he has signed his name as solicitor for complainant, against the said Belleville City Railway Company; the prayer of said bill is for vendor's lien to be decreed in favor of the complainant therein, against the property of the Belleville City Railway Company, claim-

ing that the transfer hereinbefore set out of the legal title of said property to have been a matter of barter and sale, for which the latter named company was indebted to the former, while in truth and in fact, said Thomas and said pretended directors well
177 knew that such transfer was a mere formal act, to carry out the contracts and understanding between the parties in interest, and that said Belleville City Railway Company is in nowise indebted to said Belleville and St. Louis Railway Company.

29. Your orators further state that the said suits tend to injure and delay and hamper the enterprise upon which the said Leathe has entered with the said Thomas and others, as hereinbefore set out, and creates confusion in the affairs of the said Belleville City Railway Company and the said Crown Coal Company; that these proceedings will materially affect the salability of the bonds of said Belleville City Railway Company, from the proceeds of which your orator Leathe as well as said Thomas, are to receive a return for the moneys expended by them in furtherance of said enterprise, according to the contract between them; that they can have no beneficial result to either party if carried on at law, and it may be difficult and certainly very inconvenient to defend the said suit at law of said Edward L. Thomas *v.* The Belleville and St. Louis Railway Company, inasmuch as all the facts are more properly cognizable in a court of equity.

In consideration of the premises, and as your orators can have no adequate relief at law, your orators pray that said Edward L. Thomas be made defendant hereto. That a writ of summons be issued commanding him to appear at the next term of this court, and answer each and every allegation hereof, but not under oath, the oath being hereby waived, and that at once a temporary writ of injunction may issue from this Honorable Court restraining the said Edward L. Thomas from farther prosecuting the said suit at law, now pending in this court wherein he is plaintiff and the Belleville and St. Louis Railway is the defendant, in which suit he declares upon the promissory note hereinbefore set out and on the common counts. And that upon a final hearing your Honor may decree that the said promissory note on which said suit at law is based was fraudulently issued without consideration, and is void. And your orators pray that said decree may annul or cancel the said promissory note, and make the temporary injunction perpetual, etc. And may your Honor grant such other and further relief, as the nature of the case may require, and to equity appertain, etc.

THE BELLEVILLE CITY RAILWAY CO.
BELLEVILLE & ST. LOUIS RAILWAY CO.
SAMUEL H. LEATHE.

G & A. KOERNER &
J. M. HOLMES, *Sols.*

178 Samuel H. Leathe, being duly sworn, on oath states that the allegations of the above bill are true; that he is the president of the said Belleville City Railway Company and the holder of

shares of the Belleville and St. Louis Railway Company, as in said bill set forth.

SAMUEL H. LEATHE.

Subscribed and sworn to before me this 20th day of November A. D. 1893.

Interlineations made before signing.

[NOTARIAL SEAL.] FRED. B. MERRILLS,
Notary Public.

EXHIBIT "A."

The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis and State of Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land, situated in the County of St. Clair and State of Illinois:

"All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

"Also all the rights of way, easements, grading and superstructures thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis."

And the grantor covenants and agrees to and with said Leathe, that it will upon demand convey by a good and proper deed of conveyance to the said Leathe or his assigns any land, easements, right of way, privilege and immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

[Belleville & St. Louis Railway Company. March 23, 1889.]

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

179 We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to said instrument for the uses and purposes therein set forth, as president of said Company. That he is president of said Company and executed said deed as president by order of the stockholders of said Company whose names are subscribed thereto also.

That the said Needles is the secretary of said Company, and that he attached the seal of said Company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

[NOTARIAL SEAL.] A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock P. M.
Recorded, book 224—p. 192.
Exhibit A.

EXHIBIT "B."

Samuel H. Leathe, widower, of the City of St. Louis and State of Missouri, the grantor, in consideration of the sum of Four Hundred and Ninety-nine Thousand Five Hundred Dollars to him paid by the Belleville City Railway Company, a corporation of the State of Illinois, duly organized and existing under and by virtue of an act of the General Assembly of said last-named state entitled "An act to incorporate the Belleville City Railway Company," approved February 25, 1867, hereby grants, bargains, sells and conveys unto the said Belleville City Railway Company all the following described lands, tenements, easements, and rights situated and being in the County of St. Clair and State of Illinois:

180 Lot number two hundred and thirty-three (233), in the third subdivision of Cahokia Commons, with all the accretions thereto.

Also all that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the Belleville & St. Louis Railway Company by deed bearing date December 12th, 1890, and recorded herewith, a reference to said deed being made for a more particular description, together with all the grading and superstructures thereon.

Also all the rights of way and easements conveyed to the said grantor by the following deeds:

From Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Maria Helena, his wife, dated March

1, 1893, and recorded in said recorder's office in book 224 and page 170.

From Mary Helena Voellinger and Peter, her husband, dated March 1, 1893, and recorded in said recorder's office in book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated March 8, 1893, and recorded in said recorder's office in book 228, page 124.

From Alois Forst and Catherine, his wife, and Christostomus Boul and Mary Ann, his wife, dated May 13, 1893, and recorded in said recorder's office in book 224, page 183.

Also all the lands easements, rights of way, grading and superstructures thereon, conveyed to the grantor by the Belleville and St. Louis Railway Company by its deed of even date herewith recorded herewith to which reference is made, the grantor hereby covenanting and agreeing to and with the said grantee to convey to it on demand any land, easements, right of way, privilege or immunity which he may hereafter acquire from the said Belleville and St. Louis Railway Company under the covenants of its said deed.

Also the following described lands in St. Clair County: all that part of Lot 69 of the Cahokia Common Fields, lying northwest of the Broilette creek as the same crosses said land, being part of surveys 104 and 105 as per plat recorded in said recorder's office in book E, page 16. Also Lot 72 on Hilgard's plat of the Cahokia Common Fields as recorded in said recorder's office in plat book "E," page 16. Also Lot 3, containing twenty-five acres, being part of the west half of the north-east quarter and the north part of the west half of the south-east quarter of section nine, township one north,
181 range nine west, as shown on plat recorded in said recorder's office in plat book "A," page 395.

Dated this 25th day of March A. D. 1893.

SAMUEL H. LEATHE. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public, in and for said county, in the State aforesaid, do hereby certify that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein, including the release and waiver of the right of Homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

HENRY M. NEEDLES,
[NOTARIAL SEAL.] *Notary Public.*

Filed for record, March 29, 1893, at 4:50 P. M.
Recorded book 224—195.
End Exhibit "B."

EXHIBIT "C."

BELLEVILLE, ILL., *March 25th*, 1893.

At a meeting of the Board of Directors of the Belleville and St. Louis Railway Company, the following proceedings were had:

Present: Bart S. Adams, John T. Taylor, Alpheus Boling and Henry M. Needles. Meeting called to order by John T. Taylor, vice-president, in the absence of John S. Hill, president. The resignation of John S. Hill as president and director of said company, is presented, and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board, and Edward L. Thomas was elected to fill the vacancy. On motion Edward L. Thomas was elected president of said company. There being no further business the board adjourned.

EDWARD L. THOMAS,
President.

HENRY M. NEEDLES, *Secretary.*

182 BELLEVILLE, ILLINOIS, *March* 25, 1893.

At a meeting of the stockholders of the Belleville & St. Louis Railway Company, the following proceedings were had:

Bart S. Adams, owner of	62 shares.
John T. Taylor, owner of	50 shares.
Henry M. Needles, owner of	1 share.
Alpheus Boling, owner of	1 share.
Edward L. Thomas, owner of	876 shares.
Josephine Johnson, by proxy, owner of	10 shares.
Total	1000 shares.

And Edward L. Thomas, owner of 3980 shares new stock.

Henry M. Needles, owner of 20 shares new stock.

Total, 5000 shares stock.

On motion Bart S. Adams is elected chairman of stockholders' meeting, and Henry M. Needles secretary.

Edward L. Thomas offered the following resolution: "Be it resolved, that the president and secretary of this company be authorized and directed to transfer and deed to Samuel H. Leathe all of the property, rights of way, easements and grading of this company as per deed presented, and bearing date this 25th day of March, 1893." Which resolution was unanimously adopted.

There being no further business before the meeting, the meeting therefore adjourned.

BART S. ADAMS, *President.*

HENRY M. NEEDLES, *Secretary.*

We, the undersigned stockholders of the Belleville & St. Louis Railway Company, being present, hereby confirm the action of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ill., March 25, 1893.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
ALPHEUS BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

End Exhibit "C."

183 EXHIBIT "D."

At a meeting of the stockholders of the Belleville City Railway Company, held at the office of the company, in the city of Belleville, on the 25th, day of March, A. D. 1893, the following proceedings were had: Present, Charles W. Thomas, owning 499.6, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one share, Bartlett S. Adams, one share; Mr. Adams was made president and C. W. Thomas secretary. The following named persons were unanimously elected directors of the company: Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor and Bartlett S. Adams, and the meeting adjourned.

(Signed) BART S. ADAMS,
Pres't of Meeting.
CHARLES W. THOMAS,
Secretary.

At a meeting of the directors of the Belleville City Railway Company, held at its office in the city of Belleville, immediately after the adjournment of the stockholders' meeting March 25, 1893, the following proceedings were had, all the directors being present: Mr. Bartlett S. Adams was elected president of the company, and Charles W. Thomas, secretary. Mr. Taylor introduced the following resolution and moved its adoption: "Resolved, that a call of one hundred per cent. be made upon the capital stock of this company, payable on or before May 1, 1893, and that the secretary be directed to give written notice of this call to all the stockholders within twenty days." Mr. E. L. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of $499,500 certain property described and referred to in his deed to the company of this date, which was produced but which is not delivered. Mr. Needles moved that the proposition be accepted, upon the condition that Mr. Leathe should give this company credit on such purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of

its stock he may hereafter acquire and may credit on said stock calls the value of the services he may hereafter perform in floating the company's bonds, and also the indebtedness due him from the company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the company, subject to calls made thereon to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made
184 at this meeting upon his 4,995 shares of the stock of this Company, upon the condition that he float the $500,000 of bonds of this Company, heretofore authorized to be issued, any of such bonds that he sells to net this Company such a price as may be hereafter agreed upon between him and the Board of Directors of this Company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the Company to be accounted for by him at par, to the end that the railway of this Company may be at once constructed and operated from some point within the original City of Belleville to the Mississippi River; and upon the further condition that Mr. Leathe protect this Company from any decree foreclosing the mortgage to secure said bonds until one year after its said railway is in operation, and that Mr. Leathe be requested to sign the record of the proceedings of this Board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion, and it was unanimously adopted.

I accept the terms of the foregoing resolution.

(Signed) SAMUEL H. LEATHE.

And the Board adjourned to meet subject to the call of the President.

(Signed) BART S. ADAMS, *Pres.*
(Signed) CHARLES W. THOMAS, *Secretary.*

At a meeting of the Stockholders of the Belleville City Railway Company, held at its office in the City of Belleville on the 25th day of March, immediately after the Board adjourned the following proceedings were had. Present, all the stockholders. Mr. Samuel H. Leathe was made Chairman of the meeting, and Charles W. Thomas was made Secretary. Mr. Chipley offers the following by-law and moves its adoption.

XVII:

The Board of Directors of this Company shall hereafter consist of seven stockholders.

Mr. Adams seconded the motion, and the by-law was unanimously adopted.

H. M. Needles, E. L. Thomas, Bartlett S. Adams, John T. Taylor and Charles W. Thomas offered their resignation as directors, and their resignations were accepted.

The stockholders then proceeded to the election of seven directors. Mr. Adams moved that two tellers be appointed by the President to take and count the ballots of the stockholders, and Mr.
185 Adams and Mr. Taylor were appointed tellers. Upon an inspection of the ballots the tellers reported that the following named persons had received the number of votes set opposite their respective names. Edward L. Thomas, 500 votes; Bartlett S. Adams, 5,000 votes; John T. Taylor, 5,000 votes; Lucien M. Chipley, 5,000 votes; Samuel H. Leathe, 5,000 votes; Samuel Leathe, 5,000 votes; James H. Waddock, 5,000 votes.

On motion Messrs. Thomas, Adams, Taylor, Chipley, Samuel H. Leathe, Samuel Leathe and Waddock were declared to be directors of the Company until the next annual meeting of the stockholders. And the meeting adjourned.

(Signed) CHARLES W. THOMAS, *Secretary.*
(Signed) SAM'L H. LEATHE, *Chairman.*

We, the undersigned, being all the stockholders of said Company, hereby ratify and confirm all the proceedings set forth in this record book.

(Signed) SAM'L H. LEATHE.
JOHN T. TAYLOR.
JAS. H. WADDOCK.
SAM'L LEATHE.
CHARLES W. THOMAS.
L. M. CHIPLEY.
H. M. NEEDLES.
EDWARD L. THOMAS.
BART S. ADAMS.

March 25th, 1893.

At a meeting of the Directors of the Belleville City Railway Company, held at its office in the City of Belleville, on the 25th day of March, A. D. 1893, after the adjournment of the foregoing stockholders' meeting, the following proceedings were had. All the directors were present. The following persons were unanimously elected to the several offices of the Company:

Samuel H. Leathe, President and Treasurer.
Lucien M. Chipley, Vice-President.
Charles W. Thomas, Secretary.
And the Board adjourned.

(Signed) CHARLES W. THOMAS, *Secretary.*
(Signed) SAM'L H. LEATHE, *Pres't.*
L. M. CHIPLEY, *Director.*
EDWARD L. THOMAS, *Director.*
BART S. ADAMS, *Director.*
JOHN T TAYLOR, *Director.*
SAM'L LEATHE, *Director.*
JAS. H. WADDOCK, *Director.*

Filed Nov. 21, 1893.

THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ill.

186 STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, September Term, 1893.

SAMUEL H. LEATHE ET AL.
vs.
EDWARD L. THOMAS.

Bill for Injunction and Relief.

The defendant, Edward L. Thomas, for answer to said bill, says: That he has examined the Bill of the Complainants herein presented. That item one in said Bill is true; that item two in said Bill is true; that item three in said Bill is true; that item four is true; that item five in said Bill is true; that item six is untrue, that item seven is true; item marked 9, there being no item eight; is true in so far as it states that Edward L. Thomas had expended some money, but is untrue when it says that the complainant, Samuel H. Leathe, was not acquainted with the amount thereof, as will be shown hereafter; that item ten is true, except that the said Leathe knew by statement rendered to him the exact amount due the heirs of W. A. Adams; that item eleven is in the main true, but that while the affairs of said Thomas were desperate, said Thomas believed that had the said Leathe not gone into the enterprise, others would have become interested therein; that item twelve is true, except that the agents of the said Thomas did not approach the complainant Leathe, but that one Lucien M. Chipley, broker, acted in that behalf, but that prior to January 24th said Chipley and Leathe were acting together, and were to enter into a joint contract as hereinafter set forth, did approach the complainant Leathe, and that the defendant Thomas did write the letter set forth in the Bill under the caption of item twelve; that the statements in said letter are true in every respect; that under said letter and arrangement it was agreed that the said Thomas should control the building of the railway; that item thirteen is true in so far as it states the action taken by Edward L. Thomas and Bart S. Adams; that defendant says that on said 24th day of January, 1893, he and the said Bart S. Adams signed the said instrument set forth in said item thirteen in said Bill, and that he signed himself the part following the said instrument; that it is not true that the said Samuel H. Leathe and the said Lucien M. Chipley signed said instrument on said day, or that they ever executed the same within the true intent and meaning of the said instrument.

187 Defendant further says that the said Bart S. Adams and defendant signed said instrument on said day, and that defendant, in the presence of the said Bart S. Adams and said Lucien M. Chipley, requested the said Samuel H. Leathe and the said Lucien M. Chipley to then and there sign and execute said instrument; that the said Samuel H. Leathe then and there refused to execute the same, and desired to take it and consider it further; that the said instrument then signed by the said Thomas and Adams

was then delivered to the said Leathe, unsigned by said Leathe and Chipley; that afterwards the said Leathe, but not in conformity to the terms of said instrument, took up and paid outstanding notes and indebtedness of this defendant and of Bart S. Adams as follows:

Complainant Leathe paid to Mrs. Josephine Johnson such sum as he agreed upon for stock and bonds of the Belleville & St. Louis Railway Company then held by the said Josephine Johnson, and which was stated in the account of W. A. Adams as having been advanced by him; that the said Leathe paid, as defendant is informed by him, to the said Josephine Johnson, the sum of $1,500 for $1,000 of stock and $2,000 of bonds in the Belleville & St. Louis Railway Company, for which the said Leathe demanded and received of Bart S. Adams his note for that amount.

That said Leathe took up the note of $750 given by the said Thomas to Gould, and secured by bonds of the Belleville & St. Louis Railway Company, and being part of the $3,000 mentioned in said letter, and exacted from said Thomas a note signed by the said Thomas for the amount of said note held by said Gould, and entered into an agreement with the First National Bank of Belleville, by which he obtained possession of $90,000 of said bonds held by said bank as collateral.

Defendant further says that item fourteen is true, but that it does not state all of the facts, and that they are stated as hereinbefore; that the said Leathe paid the amount as stated to Mrs. Josephine Johnson and to the Third National Bank, which was the Gould note.

Defendant further says that item fifteen is wholly untrue; that said Leathe never asked defendant nor the officers, directors or anybody connected with the Belleville & St. Louis Railway Company, to transfer — him any stock at any time; that it is not true that the said Bart S. Adams delivered to said Leathe one hundred shares of the capital stock of the Belleville & St. Louis Railway Company as his, Leathe's, or that the said Edward L. Thomas ever attempted to deliver to said Leathe 875 shares of the said stock except as per the terms of said instrument of January 24th; that it is true that said 875 shares were deposited with the Third National Bank of St. Louis, and that it is true that under the terms of the
188 instrument of January 24th, if the same had been executed by said Leathe and Chipley, the defendant, Thomas, would have delivered said shares to said Leathe under the guarantee attached to said instrument, but that after the refusal of said Leathe to execute said instrument, no further attempt was made to get said stock, nor did said Leathe further interest himself therein until as hereinafter stated; that it may be true that the said Leathe is now in possession of said shares, but that he is not the equitable owner thereof; that said shares were delivered by the affiant to one Henry T. Kent, as collateral to secure a note of $500 due by the said Belleville & St. Louis Railway Company to the said Henry T. Kent, being part of the $3,000 mentioned in a letter written by Edward L. Thomas to the said Samuel H. Leathe, and mentioned in said bill under paragraph twelve thereof; that the said Henry T. Kent de-

livered the said stock to the said Leathe on Saturday or Monday, the 25th or 27th day of November, 1893, upon the payment to the said Henry T. Kent by said Samuel H. Leathe of a part of the indebtedness of the said Belleville & St. Louis Railway Company to the said Henry T. Kent, for which said stock had been put in the hands of the said Henry T. Kent as collateral; and that the said Samuel H. Leathe in making said statement, falsely misstates the facts knowingly, and procured said stock in order to be in a position to make with seeming truth said false statements.

Defendant admits that the increase of stocks was made as stated in said paragraph fifteen, but denies that the said Samuel H. Leathe ever had in any manner any equitable or legal right to any stock in the Belleville & St. Louis Railway Company, and that all the rights that he had acquired have been acquired under the terms of the instrument signed by Adams and Thomas, dated January 24, 1893, which said instrument was never executed by the said Leathe and Chipley, and which, said Leathe declined and refused to execute; and which has been wholly annulled, abrogated and set aside.

Defendant further says that the item sixteen in said bill is untrue in so far as it states that said Leathe has energetically proceeded since the making of said contract to carry out the provisions thereof, and denies that he has expended in the purchase of terminals and rights of way and in the construction of said railway more than $100,000, and states the facts to be that during the summer of 1893, it was possible and within the line of the proper carrying out of the contract entered into by the said Leathe with the Belleville City Railway Company, on the 25th of March, 1893, to have constructed said railway out of the coal lands in said letter in said bill set forth, and to have sunk a shaft or shafts and having been mining and transporting coal, according to said letter and
189 said supposed contract of January 24th, long before this time.

And defendant says that the said Leathe has delayed in every manner the proper construction of said road, and has refused to go on therewith according to the best methods of railway construction.

Defendant further says that item 17 is not true, that said instrument of January 24th was never executed by the said Leathe and Chipley; that it was never determined by the parties to said instrument that the charter of the Belleville City Railway should be acquired without objection, but that defendant objected to the acquirement of said charter and insisted that the said Leathe and Chipley should sign and execute the instrument of January 24th; that the said Leathe refused to execute said instrument and insisted that the said Edward L. Thomas should procure the charter of the Belleville City Railway Company; that the said Thomas objected persistently to the procurement of said charter and upon the statement made by the said Leathe and Chipley to him that they would not enter into the proposed contract of January 24th, and would not go on with the enterprise unless he procured the said charter.

Defendant thereupon arranged with Charles W. Thomas, who then had control of said charter for its purchase.

Defendant was compelled to surrender to Charles W. Thomas

$25,000 of the stock that he was to have under the terms of the instrument dated January 24th, that that surrender also included a proportionate surrender of the stock of other companies that were to be formed under the terms of the instrument of January 24th, 1893; that it had been determined that the proportion in amounts of stock in all of the companies that were to be formed was to be maintained as per stock held in the Railway Company.

That it is true that the nominal stock of the Belleville City Railway Company was $50,000 and was increased, as stated in item 17, to $500,000; that said increase was made upon full consultation and discussion by the said Leathe, Thomas, defendant, Adams and those connected with the enterprise.

That the 18th paragraph in so far as it states the facts of conveyances is true, but that the reasons therefor as are hereinafter stated.

That paragraph 19 is true as therein stated that Charles W. Thomas transferred to the said Leathe 4,995 shares of the capital of the Belleville City Railway Company, but it is not true that any action was taken by the said Leathe, Thomas, Adams and Chipley under the terms of the instrument signed by said Thomas and Adams on January 24, 1893, but that every action taken on the 25th day of March was taken under the contract then entered into, and
190 that prior to that time, to wit: about the middle of March 1893, and after the purchase of the franchise of the Belleville City Railway Company by Defendant from Charles W. Thomas, a meeting was held by the said Charles W. Thomas, Samuel H. Leathe, Lucien M. Chipley and Edward L. Thomas, at the office of the said Chipley in St. Louis, and at said meeting Charles W. Thomas then stated that he had no connection with the Belleville & St. Louis Railway Company, and that any proposed contract or proposition that had been heretofore entered into would not be applicable to the State of affairs then existing, and that such contract would have to be abrogated and that the said Leathe then and there assented to the proposition of the said Charles W. Thomas and admitted that the said proposed contract was not signed by him and that it would be abrogated and that a new contract must be entered into. Thereupon a new contract was discussed and the terms thereof from time to time spoken of until the 25th day of March, 1893, when the new contract was entered into.

Defendant further says that it is true that he agreed to pay for said charter out of his stock, but that said payment was made with objections, and never would have been made if said Leathe and Chipley had executed the proposed contract of January 24th, and by reason of the statement made by the said Leathe, that he would not execute such proposed contract and would not go into the enterprise unless the charter of the Belleville City Railway was procured, defendant was compelled to procure said charter, and that if the said Leathe and Chipley had have executed the proposed contract of January 24th, and so informed defendant, defendant never would have purchased the charter of the Belleville City Railway Company; that said purchase was made by defendant at a sacrifice

of the interest of defendant in the enterprise of over ten thousand dollars.

Defendant says the statement of facts made in item 20, so far as it relates to the actions taken on the 25th day of March, 1893, are true, except that they were not mere formal actions, but that they were made after a full discussion and made to replace the proposed contract of January 24th, and made after it was agreed and understood by all the parties that the proposed contract of January 24th had not been executed and that it was not to be executed, but that an entirely new contract was to be entered into, which was done on the 25th day of March, 1893, and that it is not true that the said action had any reference to the proposed contract of January 24, 1893; that the said proposed contract of January 24, 1893, has never been executed by the said Leathe and Chipley as they informed defendant, and that by agreement it was abrogated, annulled and set aside; that an entirely new contract was to be entered into,
191 which was discussed and finally determined upon on the 25th day of March, 1893, and that it is not true that the said Leathe has proceeded with all possible energy under said contract. That as to item 21 in said bill defendant says that the said Leathe refused and declined to issue the bonds of the Belleville City Railway Company, on the first day of May, as provided for and as agreed upon, that he declined to make the Mercantile Trust Company, of New York, the trustee, as agreed upon, and finally determined to make the St. Louis Trust Company trustee; he finally determined that said bonds should be dated the first day of July, 1893; that defendant believes that had said bonds been issued as per the agreement and contract on the 1st day of May, 1893, they could have been floated, but that the time when said Leathe could float the bonds was a matter of no importance to the Belleville City Railway or to defendant, because the said Leathe had agreed to furnish funds to construct said Railway at once, without regard to the time of floating of said bonds, and because the said Leathe had agreed upon the conveyance to him of the property of the Belleville and St. Louis Railway Company to pay the indebtedness of the said Railway Company, a part of which is the indebtedness now sued on by defendant and which the said Leathe now seeks to enjoin by this bill, and that no time was fixed in which the said Leathe should pay the indebtedness of the Belleville and St. Louis Railway Company.

Defendant further says in regard to item 22 that it is true, except in so far as it refers to the proposed contract of January 24, 1893, alleging that the said proposed contract of January 24th was never entered into as hereinbefore set forth, and that the agreement to increase the stock of the Crown Coal Company to $200,000 was made in the discussion of the contracts that were to be entered into after the purchase of the charter of the Belleville City Railway Company.

That item 23 defendant says is true, excepting as to the statement that said Leathe had expended $100,000; and it is true that on the 25th day of March, 1893, the stock of the said Crown Coal Company was increased to $200,000 and that the name was changed

as in said item 23 stated; that the objects thereof were changed as in item 23 stated.

That item 24 is true in so far as it states that the said Leathe transferred his property and assigned his stock in the Crown Coal Company in the same proportion as the subscribers held the stock of the Belleville City Railway Company, but not in accordance with the proposed contract of January 24, 1893, but in accordance with the new contract entered into by said Leathe as hereinbefore stated; and Defendant denies that the proposed contract of
192 January 24, 1893, formed or still forms the basis of the rights of the parties interested in said companies as between themselves, but states the fact to be that the said proposed contract of January 24, 1893, was never executed by the said Leathe up to March 25, 1893, and that the contract of March 25, 1893, was a new contract by express arrangement, abrogating and annulling the proposed contract of January 24, 1893; that the defendant denies that said Thomas Taylor and Adams owe the said Leathe $4,500 furnished to them, as stated in item 24, but asserts the fact to be that the said Thomas, Adams and Taylor, with Meysenburg were the owners of the property of the Crown Coal Company, and had on hand at the time of these transactions over $9,000, over and above its indebtedness, which sum was left by them in the hands of the new company, but that enough of said sum was to be taken out to pay the then existing debts of the Crown Coal Company, and to purchase the stock of the said Meysenburg in said coal company, and that the said $4,500 spoken of by the said Leathe in said item 24, was secured or paid by said Leathe under said agreement out of the funds of the said Thomas by Taylor and Adams then in the Crown Coal Company of which the said Leathe had control.

Defendant further says that the said Crown Coal Company, had during the last year or two, prior to the arrangement herein spoken of, made a large sum of money and had then due it a sum in excess of $9,000, and out of this sum it was agreed that the said stock of the said Meysenburg should be purchased. Defendant denies that any sum was borrowed from complainant for the purchase of said stock, and alleges that said Leathe has failed in every particular to carry out his contract in that regard.

Defendant further says that the said Leathe in item 25 of the said bill, falsely alleges that he is the owner or equitable owner of stock of the Belleville & St. Louis Railway Company; that said complainant is not the equitable owner or legal owner of any share of stock in the said company; that the stock acquired by him from Josephine Johnson was acquired under the terms of the proposed contract of January 24th; that he exacted a note for the same as he informed defendant, and as Bart S. Adams informed defendant, from the said Bart S. Adams for the amount paid Josephine Johnson for said stock; that all of the stock he has taken up, was prior to the time of the entering of the new contract of March 25, 1893, excepting 875 shares which he has lately obtained from Henry T. Kent, as hereinbefore set forth and of which he is not the legal or equitable holder, except as collateral for a debt of the Belleville & St. Louis Railway Company which he agreed to pay on the 25th day

of March, 1893. That it is not true that the defendant ever caused a fraudulent meeting of the Board of Directors of the Belleville & St. Louis Railway Company to be held, but that on the 21st
193 day of August, 1893, a meeting of the Board of Directors of said Company was held at which the promissory note mentioned in said item 25 was executed; but that said note was not fraudulently executed but executed in good faith, with an intention to fix the amount of the indebtedness of said company to the said Edward L. Thomas. That the amount in said note was given by the said Edward L. Thomas to the said company in a statement then made, which said statement was substantially made to the said Leathe before the entering into the contract of March 25th, and before the signing by Bart S. Adams and Edward L. Thomas of the intended contract of January 24, which said statement was made a part of the said proposed contract, and is not exhibited by said complainant nor set out on this bill, but which defendant makes a portion of his answer and files a copy hereof, marked Exhibit "I" to his answer. Defendant further says:

As to item 26, that the Directors of said Belleville & St. Louis Railway Company did not act without power or shadow of authority; that it is not true that neither of them had no substantial interests in the corporation for which they acted, but that on the contrary the said Thomas and Adams and Boling and Taylor were substantially interested in said corporation; Defendant denies that the action taken by the said Board of Directors when said note was issued was fraudulent, and says that it is not true that the said Belleville & St. Louis Railway Company was not indebted to Edward L. Thomas for the amount of said note.

Defendant further says that the statement in item 26 that to whatever amount said Thomas may have had a just claim against the Belleville & St. Louis Railway Company for money expended and labor on account of constructing said Railway he has no claim which is now due and enforceable against said Railroad is not true, but that the amount expended by said Thomas is now due and payable to him by the terms of the contract entered into by the said Complainant Leathe, upon the sale and deeding to him of the property of the Belleville & St. Louis Railway Company, and that all other allegations in said item or in said Bill contrary to the statements herein are untrue. That defendant further says that it is not true, that the said Samuel H. Leathe, in furtherance of said enterprise and for his own protection and that of his associates, including said Edward L. Thomas, proposes as soon as the condition of the market allows, to use all energetic means to realize on said Bonds because he says that the said Samuel H. Leathe, contrary to the contract entered into by him, has refused and continued to refuse, until the 9th day of August, 1893, to call a meeting to issue the said bonds and after said meeting was called he declined to attend the same, and never did issue the said bonds nor execute the
194 Mortgage to secure the same until about the first of October, 1893, more than six months after entering into the contract of March 25, 1893, and that all protestations made by the said Leathe

that he intended or desired to build the said Railway in good faith under the said contract of March 25, 1893, are untrue.

Defendant further says that item 27 is true.

That under item 28 it is true that he has commenced suit in the name of the Belleville and St. Louis Railway Company against the Belleville City Railway Company, but it is not true that the said Thomas and said pretended directors well knew that the said transfer stated in said twenty-eighth item, was a mere formal act, but states that the said transfer was made under the agreement stated on the 25th day of March, 1893, and that the said suit was brought in good faith to preserve the lien of the Belleville and St. Louis Railway Company for the property sold to the said Leathe, and by him transferred to the Belleville City Railway Company, in payment of his stock; that no claim has ever been made by the Belleville and St. Louis Railway Company, that the Belleville City Railway Company is indebted to it, except such as would be required in a bill for vendor's lien as herebefore set out.

Defendant further says that in regard to item 29, that it is not true that the suits by the said Edward L. Thomas and the one now sought to be enjoined, tend or tends to delay and hamper the enterprise upon which the said Leathe has entered with the said Thomas and others, and that may create confusion in the affairs of the Belleville City Railway Company and the Crown Coal Company, and that may affect the salability of the Belleville City Railway Company's bonds, but affiant says that the whole of said suits are due to the refusal of the said Leathe to comply with his plain and well understood contract, and that the claim of the said Leathe in this bill, that the proposed contract of January 24, 1893, is in force, is false, and through such false claim and by reason of his refusal to comply with the terms of his contract, the entire trouble that the said Leathe complains of has arisen, and

Defendant alleges that said Leathe fraudulently procured the signature of said Chipley to said proposed contract of January 24th, and fraudulently signed the same himself on or about the 27th day of July, A. D. 1893, after said Leathe had refused to issue the bonds under the contract of March 25th, and with the fraudulent intention of claiming it to be in full force and effect, he well knowing that he had not executed said proposed contract, and had refused so to do when requested by this defendant, and that he now fraudulently sets up said contract in order to escape his liability under the contract of March 25, 1893.

195 Defendant further says that prior to the execution by him of the proposed contract dated January 24th, said Leathe informed defendant that he had on hand $225,000 which he expected, if he went into this enterprise, to use in it; that it was never expected, nor was it thought that the bonds of the said railway could be floated or put upon the market until said road should be completed as far as the bluffs at least, and should be engaged in the hauling of coal from the mines at the bluffs. That these matters were frequently spoken of, and that said Leathe always claimed that he would be compelled to put up enough money to so complete the road, before he could hope to realize from the bonds, and that it is

not true that the bad financial condition of affairs at the present time, has had anything to do with the failure of the said Leathe to construct said road if said Leathe's former statements make to defendant were true.

Defendant, further answering, says that said Leathe had persistently refused to carry out any of the contracts made by him. That instead of paying for the coal, as mentioned in said letter referred to in the instrument of January 24, 1893, he insisted on a sale to him of the coal and surface, and declined to execute the contract of March 25, 1893, until the same was so conveyed for the sum of $24,000, which was to be paid to the grantees, the defendant and his wife, in bonds of the Belleville City Railway Company; that he persistently refused to issue said bonds of the Belleville City Railway Company, and refused to give the same to said grantees, and refused to reconvey said property or pay in any way for the same, after conveying the same to the Crown Coal Company.

This defendant says that the amount due this defendant was well known to said Leathe, except as to a portion of the grading, which at the time of the rendition of the account to said Leathe by defendant had not been calculated by the engineer, but had been estimated.

In every other respect the items were to be paid by said Leathe, and in assuming the debts of the Belleville and St. Louis Railway Company under the contract of March 25th the statement made was referred to as fixing the amount of that indebtedness, all of which was well known to said Leathe, it being also understood and agreed that the same was to bear interest, as provided by the resolutions of the directors of said railway company long before that time, in the hands of said Leathe, and examined by him.

The defendant, having fully answered, prays to be hence discharged, with his costs, etc.

EDWARD L. THOMAS, *Pro Se.*

Filed Nov. 28, 1893.

THOMAS MAY, JR.,
Circuit Cl'k, St. Clair Co., Ill.

196 Account Chipley and Leathe.

Delivered January 12, 1893.

Organization.

1889	License	$2.00	
	Certificate	3.00	
	Notices	1.00	
	Publication	7.50	
	Recording	12.25	
	Publication	7.50	
	Meeting	3.00	
	Recording	16.00	
	Certified copy	2.00	
	Printing	39.00	
	Recording	9.60	
	Certified copy	2.00	
	Seal	6.00	
1890	Engraving Bonds	745.00	
	Trustee's fee	500.00	
	Executing bonds	8.00	
	Book	2.00	
	Stamp	1.00	
	Stock book	3.00	
1891	Publication	7.50	
	Notices	1.00	
	Recording	16.00	
	Executing	5.00	
	Meeting	8.00	
	Printing	56.00	
	Binding	7.00	
	Stamps	12.50	
	Stationery	54.00	
	Printing Circulars	6.00	
	Distributing	2.50	
1892	Printing ordinances	45.00	
	Engraving	625.00	
	Publication	7.50	
	Notices	1.00	
	Meeting	8.00	
	Printing	56.00	
		$2287.85	
	Paid by Captain Adams		$4.00
	Paid by Edward L. Thomas		2283.85
		$2287.85	$2287.85

197 Sundries.

1889	Expense to St. Louis	$172.00	
	Assistance	250.00	
	Livery	152.00	
1890	Expenses to St. Louis and East St. Louis	262.00	
	Expenses to Chicago	75.00	
	Expenses to Springfield	47.00	
	Expenses to New York, Needles and self	306.00	
	Horse, buggy and harness	245.00	
	Board of horse	84.00	
	Livery	36.25	
1891	Securing ordinance	135.00	
	Chicago, Needles and self	74.00	
	Churchill contract	1500.00	
	Sullivan and Townsend	1000.00	
	Options on coal	250.00	
	Rights of way	150.00	
	Knispel C. P. fees	250.00	
	Expenses to St. Louis and East St. Louis	190.00	
	Expenses to Chicago	39.00	
	Board of horse	165.00	
	Livery	21.50	
	Ferry	1.00	
1892	Expenses to St. Louis	250.00	
	Expenses to East St. Louis	100.00	
	Stenographers	122.00	
	Petition	200.00	
	Ordinances of Belleville	450.00	
	Repairs of buggy	12.60	
	Board of horse	121.00	
	Livery	119.35	
	Repairs	6.00	
	Expenses to Chicago	22.00	
	Plats	9.00	
		$6836.70	
	Paid by Capt. W. A. Adams		1.00
	Paid by Edward L. Thomas		6835.70
		$6836.70	$6836.70

198 Right of Way.

1890	St. Louis Alton & Terre Haute R. R. Co	$3100.00	
	James Dunn	500.00	
	Walter and Mary Gowans	200.00	
	Joseph Touchette	350.00	
	Joseph Boswick & wife	1000.00	
	Oliver Brouillette	1000.00	
	Wilhelmina Roemig	300.00	
	Andrew Touchette	20.00	
	Thomas Burke for Donnelly heirs	200.00	
	Alexander Touchette	20.00	
1891	E. & L. McDonald	360.00	
	August Schmidt	500.00	
	Mrs. A. Ehrstein	50.00	
	Wm. Lepere	20.00	
1892	Wm. Atchison	425.00	
	George Merod	35.00	
	George Sherod	70.00	
	Total	$8150.00	
	Raid by Capt. W. A. Adams		$6920.00
	Paid by Edward L. Thomas		1230.00
		$8150.00	$8150.00

Contracts Graded.

1891	Alexander Forst	$700.00	
	Mary O. Thomas	2000.00	
	Joseph Ehrstein	500.00	
	Adam Emge	600.00	
	Ann Phillips	1000.00	
	Peter Schwinn	500.00	
	Jacob Voellinger	1000.00	
	Mrs. Peter Voellinger	900.00	
	M. T. Stookey	2000.00	
	Fred Tilling	1250.00	
	J. Linn	50.00	
	Consolidated Coal Co.	100.00	
		$18750.00	
	Paid by Adams and Thomas	8150.00	
	Paid by Adams & Thomas	$10600.00	

This must be credited to Thomas in the account or paid by Company. *See letter.*

199 Coal.

1890	160 acres at $60.00	$9600.00	
	Interest on deferred payments to Jan. 1st, 1893	972.00	
	Stock book	3.00	
	Stamp	.25	
	Seal	6.00	
	Blank Book	.60	
	License	2.00	
	Trial shaft		
1891	Supplies	58.45	
	Lumber	8.40	
	Fan	8.00	
	Material	13.00	
	Hire of mule	21.00	
	Hire of horse and driver	25.00	
	Hauling	13.50	
	Labor	277.95	
		$11009.15	
	Paid by Capt. W. A. Adams		2409.85
	Paid by Thomas		8599.30
		$11009.15	$11009.15

The deferred payment of $7,200 was secured by mortgage and notes of Edward L. Thomas, which with interest for 2 yrs. 3 mo. at 6% amounts to $8,172, which must be paid by the Company, and as Thomas has given notes, this is credited to him, and goes into his account.

Land.

1890	Land of Donnelly heirs	$1696.10	
	Land of McKracken	3220.00	
		$4916.10	
	By land sold to J. Slemmins	2000.00	
	By land sold to A. Pheiffer	3400.00	
		$5400.00	
	To land of W. Roemig	1500.00	
	To land of Oliver Brouillette	3060.00	
	To land of Eagle Machine Co,	1000.00	
		$5560.00	
200	Paid by Capt. W. A. Adams		$4916.10
	Paid by profit on sale		483.90
	Paid by Edward L. Thomas		160.00
		$5560.00	$5560.00
	Due by Capt W. A. Adams		$4916.10
	Due Edward L. Thomas		160.00
			$5076.10

The title of these three tracts purchased by me from proceeds of land sold and formerly purchased by Capt. Adams is in Edward L. Thomas, and will be transferred to the Company when demanded free of all incumbrances.

Construction.

1890	Grubbing	54.20	
	Hauling	1.75	
1891	Grubbing	261.50	
	Cutting piles	63.00	
	Hewing	119.20	
	Timber	63.00	
	Hauling	97.00	
	Hire of wagon	4.00	
	Lumber	.90	
	Bridges	38.00	
	Material for	15.50	
	One car of culvert pipe	118.00	
	Two cars of culvert pipe	241.35	
	Lime, sand and cement	14.85	
	Brick	24.00	
	Laying culverts	113.25	
1892	1 car of culvert pipe	102.60	
	Hauling	24.00	
	Laying culverts	84.00	
	Grubbing	127.00	
1890	Grading 118,760 yds. at 13¢	15438.80	
1891 & 1892	Grading 160,000 yds. at 18¢ (estimated)	28800.00	
1889	Engineer Graner	178.20	
1890	Engineer Graner	398.54	
	Engineer Reiss	383.21	
1891	Engineer Reiss	386.16	
1892	Engineer Reiss	1718.81	
		$48873.82	
	Paid by Capt. W. A. Adams		$9423.77
	Paid by E. L. Thomas		39450.00
		$48873.82	$48873.82

201 Grading is here charged as having been paid by E. L. Thomas the amount due him, and as he has contracted with Mr. Boling he must account to him. Expenses of grading have all been borne by Thomas, and company owes nothing outside but $300 which cannot be collected under contract until road is completed or bonds sold.

Recapitulation.

Organization	$2267.85	
Sundries	6836.70	
Right of way	18750.00	
Construction	48873.82	
Coal	11009.15	
Land	5076.10	
	$92833.62	
Paid by Capt. W. A. Adams		$23674.72
Paid by Edward L. Thomas		50386.90
Amount for which Thomas is responsible		18772.00
	$92833.62	$92833.62

Changes Made on Settlement with Railway Company August 21, 1893.

Organization	none	
Sundries, Knispel fee $250. Livery in 1893, prior to March 25, $28. Board of horse, $30. Expenses to St. Louis and East St. Louis, $72	$380.00	
Right of way		
Acct. of August Schmidt add $45	45.00	
Land		
Add $300 to Oliver Brouillette	300.00	
Coal	none	
Total added	$725.00	
202 Construction taken from estimated Grading, grading 145,876 yds. 138,876 at 18c., 24,997 68; 700 " 11c., 770 00, less $200 added for engineer 28,800 — 25,767.68 — 3,032.32, from which deduct $200 added liens	$25,767 68	$2832.32
Total less		$2,107.32

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, 1893.

SAMUEL H. LEATHE ET AL.
vs.
EDWARD L. THOMAS.

Now comes the complainant, and for replication to the answer filed by defendant, says the said answer is untrue, and the said bill filed

by them is true in all respects, and its truth they will maintain on the hearing or as the court will direct, etc.

G. A. KOERNER,
Sol. for Complainant.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1903.

SAMUEL H. LEATHE, BELLEVILLE CITY RAILWAY COMPANY, BELLEVILLE & ST. LOUIS RAILWAY COMPANY
vs.
EDWARD L. THOMAS.

Bill for Injunction.

I, A. S. Wilderman, one of the judges of said court, and the judge by and before whom said cause was heard, do hereby certify that the following is all the evidence taken and heard in said cause:

Counsel for complainant gave in evidence a letter dated January 12, 1893, written by Mr. Edward L. Thomas to Samuel H. Leathe, also a statement of account which accompanied the letter.

203 *Letter to Thomas Leathe.*

"BELLEVILLE, ILL., *January 12th,* 1893.

Samuel H. Leathe, Esq.

DEAR SIR: Herewith is presented an itemized account of money expended in the matter of the Belleville & St. Louis Railway Company by Capt. W. A. Adams and Edward L. Thomas.

The amount in account with organization is some $1,200 less than account first rendered, because of the leaving off of fee of trustee for new bonds amounting to $500, and engraving new bonds of $475, and adding some small new items accruing in this month.

The amount of sundries is increased by some $500, by items new for this month, and fee of Mr. C. P. Knispel, overlooked and really agreed upon since making statement.

The amount of right of way is decreased by amounts charged for right through lands purchased by me, and which I supposed would be retained by me, but upon conversation with you I have put into the account, and deducted the amount charged for right of way.

The amount of construction account is the same as rendered. The amount of coal lands is increased by interest for one month, bringing it up to Jan. 1st, 1893.

The land account is added, and, if thought best, the land will be transferred to the company. There are incumbrances on the land amounting to $3,500, which must of course be paid by me, if land is taken by the company.

The land is suited to our purposes, and I am willing to deed it or retain it, charging me with what company owes for it. I have of course put in sums not yet liquidated by me, but which can either

be assumed by the company or paid by me as per account, and which I will then pay. This is particularly so in right-of-way account.

The late grading is estimated, but on consultation with the engineer we concluded it was about right. Of course this is to be calculated, and charged according to calculation. It will, however, not exceed amount stated, and will likely run several thousand yards below the estimated quantity.

The right-of-way contracts are binding upon me, but it makes no difference as to how they are charged or when paid, the right will be granted, and no loss can result to the company, either by crediting to me, or assuming payment itself.

In this connection let me add, that several of the contracts were so drawn that no right of way was to be paid if coal was purchased, and I believe that nearly all can be done away with if coal is taken and one-fourth cash paid for it.

The coal account is, as mentioned, in the same condition—mortgage and notes given by me and still to be paid.

204 There are no outstanding debts of the company but $3,000, advanced me by parties with whom I had a contract. Four notes were given, and the understanding is that they are not to be paid until the enterprise is on its feet or bonds sold. One note of $750, as I mention, has two bonds up as collateral, and to get those bonds will have to be paid.

Everything I could raise has been put into this enterprise and many shifts made in order to continue along so as to complete the grading. I have deserted my business since January, 1890, and while I do not ask for any compensation for the services performed, I am satisfied the enterprise has been carried on and brought to its present stage for less money than any other enterprise of a like nature. In the right of way above we have saved over one-half, and while our grading cost considerable, when it is considered that it is nearly of a width for two tracks in all the heavy work, it will be found to be reasonable.

I do not desire to make one cent out of this enterprise except by its operation, and feel confident that the amount that I shall receive will not more than pay obligations incurred in this work.

I have not added the $16,000 for my coal, but am ready to comply with my contract as regards that matter at any time if it is thought best, when final consultation is had.

I am willing to abide by this statement, and will make any necessary instruments to carry it out, leaving in your hands funds that would come to me until all matters paid and satisfied so that the Company would be kept whole.

The proposition which I now make will leave you individually $255,000 of the R. to stock myself and Bart S. Adams $106,700, and Mr. Chipley the balance, or $78,300. This proposition to be maintained in any other company formed or purchased.

Out of amount to Bart S. Adams and myself we have some to surrender to others. Of course you would want to be treasurer and would perhaps like to have Mr. Chipley president. This can be ar-

ranged to your satisfaction; and three directors—yourself, Mr. Chipley and Bart from St. Louis; and four, Mr. Taylor, Mr. Needles, our present secretary, myself and Mr. Boling from Illinois, as the law requires a majority to live in that state. I feel confident that we can make a success of this enterprise, and hope you will conclude to take hold of it and complete it. Having everything I have in it, I feel that I am unable to carry it much further, and have largely incurred the liabilities I have, because of my desire to prevent loss to the heirs of Capt. Adams, to whom I was under great obligations for kindness done and favors shown me.

Respectfully, etc.,

(Signed) EDWARD L. THOMAS.

205 Account Chipley and Leathe.

Delivered January 12, 1893.

Organization.

1889	License	2 00
	Certificate	3 00
	Notices	1 00
	Publication	7 50
	Recording	12 25
	Publication	7 50
	Meeting	3 00
	Recording	16 00
	Certified copy	2 00
	Printing	39 00
	Recording	9 60
	Certified copy	2 00
	Seal	6 00
1890	Engraving bonds	745 00
	Trustee's fee	500 00
	Executing bonds	8 00
	Book	2 00
	Stamp	1 00
	Stock book	3 00
1891	Publication	7 50
	Notices	1 00
	Recording	16 00
	Executing	5 00
	Meeting	8 00
	Printing	56 00
	Binding	7 00
	Stamps	12 50
	Stationery	54 00
	Printing circulars	6 00
	Distributing	2 50
1892	Printing ordinances	45 00
	Engraving	625 00
	Publication	7 50
	Notices	1 00

	Meeting	8 00	
	Printing	56 00	
		$2,287 85	
	Paid by Capt. Adams		4 00
	" " Edward L. Thomas		2,283 85
		$2,287 85	$2,287 85

206 Sundries.

1889	Expense to St. Louis	172 00	
	Assistance	250 00	
	Livery	152 00	
1890	Expenses to St. Louis and East St. Louis	262 00	
	Expenses to Chicago	75 00	
	Expenses to Springfield	47 00	
	Expenses to New York, Needles and self	306 00	
	Horse, buggy and harness	245 00	
	Board of horse	84 00	
	Livery	36 25	
1891	Securing ordinance	135 00	
	Chicago, Needles and self	74 00	
	Churchill contract	1,500 00	
	Sullivan & Townsend	1,000 00	
	Options on coal	250 00	
	Rights of way	150 00	
	Knispel C. F. fee	250 00	
	Expenses to St. Louis and East St. Louis	190 00	
	Expenses to Chicago	39 00	
	Board of horse	165 00	
	Livery	21 50	
	Ferry	1 00	
1892	Expenses to St. Louis	250 00	
	Expenses to East St. Louis	100 00	
	Stenographers	122 00	
	Petition	200 00	
	Ordinances of Belleville	450 00	
	Repairs of buggy	12 60	
	Board of horse	121 00	
	Livery	119 35	
	Repairs	6 00	
	Expenses to Chicago	22 00	
	Plats	9 00	
		$6,836 70	
	Paid by Capt. W. A. Adams		1 00
	Paid by Edward L. Thomas		6,835 70
		$6,836 70	$6,836 70

207 Right of Way.

1890	St. Louis, Alton & Terre Haute R. R. Co.	$3,100 00
	James Dunn	500 00
	Walter & Mary Gowans	200 00
	Joseph Touchette	350 00
	Joseph Beswick & wife	1,000 00
	Oliver Brouilette	1,000 00
	Wilhemina Roemig	300 00
	Andrew Touchette	20 00
	Thomas Burke for Donnelly heirs	200 00
	Alexander Touchette	20 00
1891	E. L. McDonald	360 00
	August Schmidt	500 00
	Mrs. A. Ehrstein	50 00
	Wm. Lepere	20 00
1892	Wm. Atchison	425 00
	George Merod	35 00
	George Sherod	70 00
		$8,150 00
	Paid by Capt. W. A. Adams $6,920 00	
	Paid by Edward L. Thomas 1,230 00	
	$8,150 00	$8,150 00

Contracts Graded.

1891	Alexander Forst	700 00
	Mary O. Thomas	2,000 00
	Joseph Ehrstein	500 00
	Adam Emge	600 00
	Ann Phillips	1,000 00
	Peter Schwinn	500 00
	Jacob Voelinger	1,000 00
	Mrs. Peter Voelinger	900 00
	M. T. Stookey	2,000 00
	Fred Tilling	1,250 00
208	J. Linn	50 00
	Consolidated Coal Co.	100 00
		$18,750 00
	Paid by Adams & Thomas	8,150 00
	To be paid by Thomas	$10,600 00

This must be credited to Thomas in the account or paid by Company. (See Letter.)

Coal.

1890	160 acres, at $60.00	$9,600 00	
	Int. on deferred payments to Jan. 1st, 1893	972 00	
	Stock Book	3 00	
	Stamp	25	
	Seal	6 00	
	Blank Book	60	
	License	2 00	
	Trial Shaft		
1891	Supplies	58 45	
	Lumber	8 40	
	Fan	8 00	
	Material	13 00	
	Hire of Mule	21 00	
	Hire of horse and driver	25 00	
	Hauling	13 50	
	Labor	277 95	
		$11,009 15	
	Paid by Capt. W. A. Adams		$2,409 85
	" " Thomas		8,599 30
		$11,009 15	$11,009 15

The deferred payment of $7,200 was secured by mortgage and notes of Edward L. Thomas, which, with interest for 2 yrs. 3 mo. at 6%, amounts to $8,172.00, which must be paid by the Company, and as Thomas has given notes, this is credited to him, and goes into his account.

209 Land.

1890	Land of Donnelly heirs	$1,696 10	
	Land of McKracken	3,220 00	
		$4,916 10	
	By land sold to J. Slemmins	2,000 00	
	" " " " A. Pheiffer	3,400 00	
		$5,400 00	
	To land of W. Roemig	1,500 00	
	" " " Oliver Bouilette	3,060 00	
	Eagle Machine Co	1,000 00	
		$5,560 00	
	Paid by Capt. W. A. Adams		$4,916 10
	" " profit on sale		483 90
	" " Edward L. Thomas		160 00
		$5,560 00	$5,560 00
	Due Capt. W. A. Adams		$4,916 10
	" Edward L. Thomas		160 00
			$5,076 10

The title of these three tracts purchased by me from proceeds of land sold and formerly purchased by Capt. W. A. Adams is in Edward L. Thomas and will be transferred to the Company when demanded, free of all incumbrances.

Construction.

1890	Grubbing	54 20	
	Hauling	1 75	
1891	Grubbing	261 50	
	Cutting piles	63 00	
	Hewing	119 20	
	Timber	63 00	
	Hauling	97 00	
	Hire of wagon	4 00	
	Lumber	90	
	Bridges	38 00	
	Material for	15 50	
	One car of culvert pipe	118 00	
	Two cars of culvert pipe	241 35	
	Lime, sand and cement	14 85	
	Brick	24 00	
	Laying culverts	113 25	
210			
1892	1 car of culvert pipe	102 60	
	Hauling	24 00	
	Laying culverts	84 00	
1890	Grubbing	127 00	
1891	Grading 118,760 yds. at 13c.	15,438 80	
1892	Grading 160,000 yds. at 18c.	28,800 00	(estimated.)
1889	Engineer Grauer	178 20	
1890	" Grauer	398 54	
	" Reis	383 21	
1891	" Reis	386 16	
1892	" Reis	1,718 81	
		$48,873 82	
	Paid by Capt. W. A. Adams		$9,423 77
	" " E. L. Thomas		39,450 05
		$48,873 82	$48,873 82

Grading is here charged as having been paid by L. Thomas, the amount due him, as he has contracted with Mr. Boling, he must account to him. Expenses of grading have all been borne by Thomas. And the Company owes nothing outside but $3,000, which cannot be collected under contract until road is completed or bonds sold.

Recapitulation.

Organization	$2,287 85	
Sundries	6,836 70	
Right of way	18,750 00	
Construction	48,873 82	
Coal	11,009 15	
Land	5,076 10	
	$92,833 62	
Paid by Capt. W. A. Adams		$23,674 72
" " Edward L. Thomas		50,386 90
Amount for which Thomas is responsible		18,772 00
	$92,833 62	$92,833 62

211 *Changes Made on Settlement with Railway Company August 21, 1893.*

Organization		none
Sundries:		
Knispel fee	$250	
Livery in 1893 prior to March 25	$28	
Board of horse	$30	
Expenses to St. Louis & East St. Louis	$72	
		$380 00
Right of way		
Account of August Schmidt, add $45		45 00
Land		
Add $300 Oliver Bouilette		300 00
Coal		none
		$725 00
Construction taken from estimated Grading, Grading 145,876 yds.		
138,876 at 18c	24,997.68	
7,000 at 11c	770.00	
	25,767.68	
Less $200 added for engineer, 28,800 — 25,767.68 — 3,032.32 from which deduct $200 added liens		$2,832 32
Total less,		$2,107 32

Counsel for complainant then gave in evidence the contract dated January 24, 1893, as follows:

Contract is as follows:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe, $255,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 5 per cent. bonds of said company. The present bonds $150,000 to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000 with interest, and Third National Bank of $750 with interest in St. Louis.

212 Same proportion of stock to be maintained in Coal or other companies organized to carry out the project as per letter of January 12, 1893, to S. H. Leathe, by Edward L. Thomas.

Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000, and John T. Taylor, $12,700. Each party to receive back amounts advanced to the enterprise as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered, and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the Railway Company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe, until satisfied.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the statement made in my letters to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24, 1893.

(Signed) EDWARD L. THOMAS.

(Objected to; objection overruled by the court; to which ruling of the court defendant then and there excepted.)

Counsel for complainant then gave in evidence record of deeds book 233, page 79, being a deed from Mrs. Snyder to Samuel H. Leathe, and dated February 11, 1893.

"This indenture witnesseth, that the grantor, Jane E. Snyder, of the city of Belleville, County of St. Clair, and State of Illinois, for and in consideration of the sum of ten thousand dollars ($10,000) in hand paid, conveys and warrants to Samuel H. Leathe, of the city of St. Louis, and State of Missouri, the following described real estate, to wit:

Lot numbered two hundred and thirty-three (233) of the third subdivision of Cahokia Commons, bounded as follows, on the east by a road on the north by lot 236 of said subdivision on the west

by the Mississippi river, and on the south by a road, including all accretions to said lot as platted by Louis Grauer, which plat is recorded in plat book "D," page 203, of the records of said County of St. Clair, subject to rights of way heretofore granted. Situated in the County of St. Clair, in the State of Illinois, hereby releasing
213 and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 11th day of February, A. D. 1893.

JANE E. SNYDER. [SEAL.]"

STATE OF ARKANSAS, *Garland County, ss :*

I, J. W. Corrington, notary public in and for said County, in the State aforesaid, do hereby certify, that Jane E. Snyder, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 11th day of February, A. D. 1893.

[NOTARIAL SEAL.] J. W. CORRINGTON,
Notary Public.

My commission expires April 25, 1893.

Filed for record this 18th day of February, A. D. 1893, at 3:50 o'clock, p. m.

Also record of deeds, book 233, page 223, being a deed from Adams to Leathe, dated March 6, 1893.

"This indenture witnesseth, That the grantors, Ellen Adams, widow of William A. Adams, Bartlett S. Adams, the only child of the said W. A. Adams, and Mabel H. Adams, wife of said Bartlett S. Adams, of the city of St. Louis, State of Missouri, for and in consideration of the sum of seven thousand two hundred dollars, in hand paid, convey and warrant to Samuel H. Leathe, of the city of St. Louis, State of Missouri, the following described real estate, to wit:

All of the coal and mineral underlying and throughout the North-West quarter of Section Fourteen (14), Township One (1) North, of Range Nine (9) West of the 3d P. M., with the right to enter said land underground through any mine or shaft on adjacent lands and remove said coal and mineral without injury to the surface of said tract of land except such as may result from the mining of said coal and mineral in a good, workmanlike manner, in accordance with the most approved methods of modern mining, leaving sufficient pillars and supports to sustain the surface of said land.

Situated in the Town of Stookey, in the County of St. Clair, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption laws of this State.

Dated this 6th day of March, A. D. 1893.

HELEN ADAMS. [SEAL.]
BART S. ADAMS. [SEAL.]
MABEL H. ADAMS. [SEAL.]

214 STATE OF MISSOURI, *City of St. Louis, ss:*

I, Joseph G. Holliday, a notary public in and for said city, in the State aforesaid, do hereby certify, that Ellen Adams (a widow) and Bartlett S. Adams and Mabel H. Adams, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notarial Seal this — day of March, A. D. 1893.

My term expires September 7, 1894.

JOSEPH HOLLIDAY,

[NOTARIAL SEAL.] *Notary Public, City of St. Louis, Mo.*

Filed for record this 7th day of March, A. D., 1893, at 11:50 o'clock a. m.

Also Record of Deeds, book 228, page 124, being a deed from Jacob Voelinger and wife to Samuel H. Leathe, dated March 8, 1893.

"The grantors, Jacob Voellinger and Christiana Voellinger, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of ($10,000) ten thousand dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral, in, under and throughout the following described land, situated in said County of St. Clair, to wit: The North one-third of the South-East quarter and the North one-third of the East half of the South-West quarter of Section 24, Township One North, Range 9 West, containing (80) eighty acres. Also Lot 3, part of the North-East quarter of Section 24, Township One North, of Range Nine West, as platted in the recorder's office of said county, in book "A," page 258, containing 100 acres, excepting two acres in the shape of a square, the center of which shall be the house now on said premises; and the grantors further grant to said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; Provided the same shall not interfere with any buildings or destroy any growing crops. And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad,
being thirty feet on each side of the center of the track of said
215 railroad as the same is now located and graded across said land. Upon the condition that the grantee makes and maintains an under trackway across said right of way for use of grantors. And the grantor- further covenants that *he* will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor- hereby releasing and waiving all

rights under and by virtue of the homestead exemption laws of this State.

Dated this 8th day of March, A. D. 1893.

JACOB VOELLINGER. [SEAL.]
CHRISTIANA VOELLINGER. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Lucius D. Turner, a notary public, in and for said county, in the state aforesaid, do hereby certify, that Jacob Voellinger and Christine Voellinger, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that they signed sealed and delivered the said instrument including the release and waiver of the right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this eighth day of March, A. D. 1893.

[NOTARIAL SEAL.] LUCIUS TURNER, *N. P.*

Filed for record this 8th day of March, A. D. 1893, at 2:30 o'clock p. m.

Also, Record of Deeds, book 224, page 168, being a deed from Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893.

"The grantor, Joseph Ehrstein, of the county of St. Clair and State of Illinois, for and in consideration of the sum of $4,000 to him paid, hereby conveys and warrants unto Samuel H. Leathe, of the city of St. Louis, and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land, situated in the said county of St. Clair, to wit:

The south half of the north-east quarter of section 14, township one north, range nine west, containing (80) eighty acres.

The grantor further grants to the said grantee and his assigns the perpetual right to pass and repass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns. Provided the same shall not interfere with any buildings or
destroy any growing crops.
216 And the grantor also grants to the said Leathe and his assigns, the right of way over said land for a railroad, being thirty feet on each side of the center of the track of said railroad as the same is now located and graded across said land.

And the grantor further covenants that he will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 27th day of February, A. D. 1893.

JOSEPH EHRSTEIN. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public for said county, in the state aforesaid, do hereby certify, that Joseph Ehrstein, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given *this day* under my hand and notarial seal this 27th day of February, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record February 27, 1893, at 11:20 o'clock, a. m.

Also, Record of Deeds, book 224, page 169, being a deed from Mary Voellinger and husband to Samuel H. Leathe, dated March 1, 1893.

"The grantors, Mary Helena Voellinger and Peter Voellinger, of the county of St. Clair, and State of Illinois, for and in consideration of the sum of twelve thousand and four hundred and fifty dollars ($12,450) to them paid, hereby convey and warrant unto Samuel H. Leathe, of the city of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land situated in said county of St. Clair, to wit: Lot 3, part of the north-east fractional quarter of section 19, township one north of range 8 west, at platted in recorder's office of said county, in book "C," page 397, containing thirty-eight and one-half (38½) acres; also lot No. 1, part of the north-east quarter of section 24, township 1 north, of range 9 west, as platted in the recorder's office of said county, in book "A," page 258, and containing twenty-six (26) acres; also lot No. 4, being the north-west fractional
217 quarter of section 19, township one north, of range 8 west, as platted in the recorder's office of said county, in book "C," page 397; and containing 105 acres, excepting three acres in a square of which the house now on said premises shall be the center.

And the grantors further grant to said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; provided the same shall not interfere with any buildings or destroy any growing crops.

And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being thirty feet on each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way to any other coal switch over any of said land except to the grantee or his assigns; the grantors hereby releasing and waiv-

ing all rights under and by virtue of the Homestead Exemption laws of this State.

Dated this first day of March, A. D. 1893.

MRS. MARY HELENA VOELLINGER. [SEAL.]
PETER VOELLINGER. [SEAL.]

For and in consideration of the money paid to the foregoing grantors by the said Samuel H. Leathe, I hereby consent to the execution of the said deed by the said Mary Helena Voellinger and Peter Voellinger to the said Samuel H. Leathe, and do affirm the conveyance of the coal and mineral underlying the tracts therein described to him, the said Samuel H. Leathe.

Dated this 1st day of March, A. D. 1893.

her
MARY ANNA x SCHMISSEUR. [SEAL.]
mark.

Witness to signature:
L. D. TURNER.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public, in and for said County, do hereby certify, That Mary Helena Voellinger and Peter Voellinger, her husband, and Mary Ann Schmisseur, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, including the release and waiver of the right of Homestead as their free
218 and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this first day of March, 1893.

HENRY M. NEEDLES,
[NOTARIAL SEAL.] *Notary Public.*

Filed for record March 1, 1893, at 12:45 o'clock p. m.

Also, Record of deeds, Book 224, page 170, being deed of Peter Voellinger and wife to Samuel H. Leathe. Dated March 1, 1893.

"The grantors, Peter Voellinger and Mary Helena Voellinger, of the County of St. Clair and State of Illinois, for and in consideration of the sum of Two Thousand Five Hundred and Fifty Dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under, and throughout the following described land, situated in said County of St. Clair, to wit: the South two-thirds of the South East quarter of Section 24, Township one North, of Range nine West, containing one hundred six and two-thirds (106 2-3) acres.

And the grantors further grant to the said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an

air-shaft on said land at any place to be selected by said grantee or his assigns; provided, the same shall not interfere with any buildings or destroy any growing crops. And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being thirty feet on each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land, except to the grantee or his assigns, the grantors hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this first day of March A. D. 1893.

PETER VOELLINGER. [SEAL.]
MRS. MARY HELENA VOELLINGER. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public within and for said county, do hereby certify, That Peter Voellinger and Mary Helena Voellinger, his wife, personally known to me to be the same persons 219 whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument, including the release and waiver of the right of Homestead, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this first day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 1, 1893, at 12:45 o'clock p. m.

Also Record of deeds, Book 224, page 172, being a deed from Peter Schwinn and wife to Samuel H. Leathe. Consideration $13,500, dated Feb. 27th, 1893.

"The grantors, Peter Schwinn, and Josephine Schwinn, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of $13500 *dollars* to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and mineral, in, under and throughout the following described land, situated in said County of St. Clair, to wit:

Lot No. 2, part North East quarter of Section 24, Township one North, Range 9 West, as platted in Recorder's office of said County, in Book "A," page 256, containing thirty-four (34) acres; also the North West quarter of Section 24, Township one North, Range nine West, containing one hundred and sixty acres (160), excepting all that part of the same lying North of the County road where the house now stands; also the South half of the South West quarter of Section 13, Township one North, Range 9 West, containing eighty (80) acres.

And the grantors further grant to the said grantee and his assigns the perpetual right to pass and re-pass through said land, underground, for mining purposes, and the right to sink and maintain an air shaft on said land at any place to be selected by said grantee or his assigns, provided the same shall not interfere with any buildings, or destroy any growing crops; and the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being fifty feet on each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this 27th day of February, A. D. 1893.

PETER SCHWINN. [SEAL.]
JOSEPHINE SCHWINN. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public within and for said county, do hereby certify, That Peter Schwinn, and Josephine Schwinn, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that they signed, sealed and delivered the said instrument, including the release and waiver of the right of Homestead, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of February, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 3, A. D. 1893, at 9:30 a. m.

Also Record of Deeds, book 224, page 181, being a deed from Valentine Keck to Samuel H. Leathe, dated March 8, 1893.

"The grantor, Valentine Keck, of the County of St. Clair and State of Illinois, for and in consideration of the sum of $4,000 to him paid, hereby conveys and warrants unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral, in, under and throughout the following described land, situated in the County of St. Clair, to wit:

Eighty (80) acres off the west side of the south-west fractional quarter of section 19, township one north, range 8 west, excepting therefrom two acres in a square, of which the house on said tract of land shall be in the center.

And the grantor further grants to the said grantee, and his assigns, the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an

air-shaft on said land at any place to be selected by said grantee or his assigns; provided the same shall not interfere with any buildings or destroy any crops.

And the grantor further covenants that he will never grant the right of way for a coal switch over any of said land except to the grantee, or his assigns, the grantor hereby releasing and waiv-
221 ing all rights under and by virtue of the homestead exemption laws of this state.

Dated this 4th day of March, A. D. 1893.

[SEAL.] VALENTIN KECK, SR.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, Notary Public, within and for the county and state aforesaid, do hereby certify that Valentine Keck, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 16th day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 16, 1893, at 12:50 o'clock, p. m.

Also record of deeds, book 224, page 182, being a deed from Edward L. Thomas and wife to Samuel H. Leathe, dated March 8, 1893.

The grantors, Edward L. Thomas and Mary O. Thomas, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of one dollar to them paid, convey and quit-claim to Samuel H. Leathe, of the City of St. Louis and State of Missouri, the following described real estate, to wit: All that part of Lot No. 69, of Cahokia Common Fields, lying north-east of the Brouillette creek, as the same now crosses said lot, being part of surveys one hundred four and one hundred five, as platted by G. F. Hilgard and recorded in recorder's office of said county in book "E" of plats, page 16.

Also lot No. 72 on Hilgard's plat of Cahokia Common Fields, as platted and recorded in book "E," page 16 of the records of said county, being all that part of surveys one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and eleven, in said Common Fields, lying south-east of the right of way of the St. Louis, Alton and Terre Haute Railroad as now constructed across said surveys, and containing twenty-five and one quarter acres; also, lot No. 3, containing twenty-five acres, being part of the west half of the north-east quarter of section No. 9, township one north, of range 9 west, as platted in plat book "A," page 395 of the records of said

county, reference thereto being had; all situated in the county
222 of St. Clair and State of Illinois. The grantors hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 8th day of March, 1893, A. D.

EDWARD L. THOMAS. [SEAL.]
MARY O. THOMAS. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public in and for the county and state aforesaid, do hereby certify, that Edward L. Thomas and Mary O. Thomas, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free act and deed, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 9th day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 16, 1893, at 12:50 p. m.

Also, record of deeds, book 224, page 183, being a deed from Forst and Boul to Samuel H. Leathe, dated March 13, 1893. The grantors, Alois Forst and Catharina Forst, his wife, Chrisosthomus Boul and Mary Ann Boul, his wife, of the county of St. Clair and State of Illinois, for and in consideration of the sum of $4,750 dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the city of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land, situated in the county of St. Clair, to wit:

The north half of the north-east quarter of section 14, township one north, of range nine west, containing (80) eighty acres; also, lot No. 1, part of the south-east quarter of section 11 in said township and range, said lot containing 15 acres as platted in plat book "C," page 13 of the records of said county, reference thereto being had for a more particular description of said lot.

And the grantors further grant to said grantee, and his said assigns the perpetual right to pass and repass throughout said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee, or his assigns. Provided, the same shall not interfere with any building or destroy any growing crops.

223 The grantor also grants to said Leathe and his assigns the right of way over said land for a railroad, being fifty feet on each side of the center of the track of said railroad as the same is now located and graded across said lands.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land ex-

cept to grantee or his assigns, the grantors hereby releasing and waiving all rights under and by virtue of the Homestead Exemption laws of this state.

Dated this 13th day of March, 1893, A. D.

ALOYSE FORST. [SEAL.]
CH. BOUL. [SEAL.]
MARY ANN x BOUL. [SEAL.]
CATHERINE FORST. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Henry M. Needles, a notary public within and for said county, do hereby certify, that Alois Forst and Catherine Forst, his wife, and Chrisosthomas Boul and Mary Ann Boul, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person and acknowledged that they signed, sealed and delivered the said instrument including the release and waiver of the right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of March A. D. 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 16, 1893, at 12:50 p. m.

Also a deed from Samuel Leathe to the Belleville City Railway Company for property described therein, dated March 25, 1893, and recorded in book 224, page 195; also deed from Samuel H. Leathe to Crown Coal and Tow Company, dated March 25, 1893, and recorded in book 224, page 193.

"Samuel H. Leathe, widower, of the city of St. Louis and State of Missouri, the grantor, in consideration of the sum of Four hundred and Ninety-nine thousand five hundred Dollars, to him paid by the Belleville City Railway Company, a corporation of the State of Illinois, duly organized and existing under and by virtue of an act of the General Assembly of said last named state, entitled "An act to incorporate the Belleville City Railway Company, approved February 25, 1867," hereby grants, bargains, sells and conveys unto the said Belleville City Railway Company, all the following described lands, tenements, easements and rights situated and being in the county of St. Clair and State of Illinois.

224 Lot No. two hundred and thirty three (233) in the third sub-division of Cahokia Commons with all the accretions thereto. Also all that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the Belleville & St. Louis Railway Company, by deed bearing date December 12, 1890, and recorded herewith, a reference to said deed being made for a more particular description, together with all the grading and superstructures thereon. Also all the rights of way and easements conveyed to the said grantor by the following deeds:

From Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Mary Helena, his wife, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 170.

From Mary Helena Voellinger and Peter, her husband, dated March 1, 1893, and recorded in said recorder's office, book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated March 8, 1893, and recorded in said recorder's office in book 228, page 124.

From Alois Forst and Catherine, his wife, and Chrisostomus Boul and Mary Ann, his wife, dated May 13, 1893, and recorded in the recorder's office in book 224, page 183.

Also all the lands, easements, rights of way, grading and superstructure thereon, conveyed to the grantor by the Belleville & St. Louis Railway Company, by its deed of even date herewith, recorded herewith, to which reference is made, the grantor hereby covenanting and agreeing to and with the said grantee to convey to it on demand any land, easements, right of way, privilege or immunity which he may hereafter acquire from the said Belleville & St. Louis Railway Company under the covenants of its said deeds.

Also the following described land in St. Clair County, all that part of lot 69 of the Cahokia Common Fields, lying north-west of the Brouillette Creek as the same crosses said land, being part of surveys 104 and 105, as per plat recorded in said recorder's office in book "E," page 16. Also lot 72 on Hilgard's plat of the Cahokia Common Fields as recorded in said recorder's office in plat book "E," page 16.

Also lot 3 containing 25 acres, being part of the west half of the north-east quarter of the north part of the west half of the
225 south-east quarter of section 9, township one north, range nine west, as shown on plat recorded in said recorder's office in plat book "A," page 395.

Dated this 25th day of March, A. D. 1893.

SAM'L H. LEATHE. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, notary public in and for said county in the state aforesaid, do hereby certify that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me, this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

HENRY M. NEEDLES,

[NOTARIAL SEAL.] *Notary Public.*

Filed for record March 29, 1893, at 4:50 P. M.

"The grantor, Samuel H. Leathe, widower, of the city of St. Louis and State of Missouri, in consideration of the sum of one hundred and ninety-one thousand one hundred dollars to him paid by the Crown Coal and Tow Company, hereby sells and conveys to the Crown Coal and Tow Company all the following described real estate, situated and being in the county of St. Clair and State of Illinois, to wit:

First. All the coal and other mineral in, under and throughout the south half of the north-east quarter of section 14, township one north, range nine west.

Second. All the coal and other mineral in, under and throughout the north-west quarter of section 14, township one north, range nine west.

Third. All the coal and other mineral in, under and throughout the south two-thirds of the south-east quarter of section 24, township one north, range nine west.

Fourth. All the coal and other mineral in, under and throughout the north one-third of the south-east quarter, and the north one-third of the east half of the south-west quarter of section 24, township one north, range nine west, and lot three, part of the north-east quarter of the same section as said lot appears upon a plat recorded in the recorder's office of said county in Plat Book "A," page 258, excepting, however, from the 100 acres of coal covered by
226 this fourth paragraph, two acres in a square the center of which is the house now on said premises.

Fifth. All the coal and other mineral in, under and throughout the following described land. Lot three (3), part of the north-east fractional quarter of section (19), township one north, range eight west, being thirty-eight and one-half acres as the same appears upon the plat recorded in the said recorder's office in Plat Book "C," page 397, and lot one, part of the north-east quarter of section twenty-four, in township one north, range nine west, as the same appears upon a plat recorded in said recorder's office in Plat Book "A," page 258, and containing twenty-six acres, and lot four of the north-west fractional quarter of section nineteen, township one north, range eight west, as the same appears on a plat recorded in said recorder's office in Plat Book "C," page 397, and containing 105 acres, excepting, however, three acres in a square, of which the house on said premises is the center.

Sixth. All the coal and other mineral in, under and throughout the following described land: The south half of the south-west quarter of Section thirteen (13), Township one North, Range nine west, containing eighty acres. And all that part of the north-west quarter of Section twenty-four, Township one North, Range nine west, lying south of the middle of the county road, and Lot 2, part of the north-east quarter of Section twenty-four, Township one North, Range nine west, as the same appears upon a plat recorded in said recorder's office in Plat book "A," page 258.

Seventh. All the coal and other mineral in, under and throughout the following described land: The north half of the north-east quarter of Section fourteen, Township one North, Range nine west.

Also Lot one, part of the south-east quarter of Section 11, Township one North, Range nine west, as the same appears upon a plat recorded in said recorder's office, in Plat book "C," page 13.

Eighth. All the coal and other mineral in, under and throughout the following described land: Eighty acres off the west side of the south-west fractional quarter of Section 19, Township one North, Range eight west, excepting two acres in a square of which the house on the said premises is the center.

Also the following described land: The south-west quarter of Section eleven, Township one North, Range nine west, excepting tract of land described in deed made by Edward McDonald and Sylvester McDonald to Phillip Schaefer, dated March 23, 1893, and duly recorded in said recorder's office, reference being made thereto.

227 Also the steam tugs Susie Hazard, Baton Rouge Bell, and Archie Parker and barges numbered six, seven, eight, nine, now in use on the Mississippi river, at St. Louis, Missouri.

Also all the coal and mining rights and all privileges, immunities and easements, excepting rights of way, for a railroad conveyed to the said grantor by the following deeds of conveyance. From Joseph Ehrstein, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Mary Helena, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 170.

From Mary Helena Voellinger and Peter, her husband, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office, in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated March 8, 1893, and recorded in said recorder's office, in book 228, page 124.

From Alois Forst and Catherine, his wife, and Christomus Boul and Mary Ann, his wife, dated March 13, 1893, and recorded in said recorder's office, in book 224, page 183.

Dated March 29, 1892.

SAM'L LEATHE. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, Notary Public, in and for said county, in the State aforesaid, do hereby certify, that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

HENRY M. NEEDLES,
Notary Public.

[NOTARIAL SEAL.]

Filed for record March 29, 1893, at 4:50 P. M.

Complainant then gave in evidence the Bill in Chancery filed by Alpheus S. Boling *vs.* Belleville & St. Louis Railway Company.

228 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

To the Honorable Judge of said Court, in Chancery sitting:

Your orators, Edward L. Thomas and Alpheus Boling, late partners under the firm name of Boling and Thomas, who sue/n for use of Alpheus Boling, of the county of St. Clair, and State of Illinois, aforesaid, respectfully represents unto your Honor that said Alpheus Boling is by occupation a farmer and contractor for ground work, such as grading building lots, streets, public highways, railroads, furnishing and laying tiling for the purpose of draining such roads, streets and lands, and such other work as pertains to the construction of streets, highways and railroads, that on or about October, 1890, your orator, Alpheus Boling, in connection with Edward L. Thomas, entered into a contract with the Belleville & St. Louis Railway Company, one of the defendants hereinafter named, to do certain grading and other work in and about constructing the road-bed on the right of way of the Belleville & St. Louis Railway Company, for a consideration of thirteen cents per cubic yard, to be paid for from time to time as the work was done, upon estimates made by the civil engineer in charge of the work; that a large amount of work was done under said contract at said price, that afterwards your orator entered into another and further contract for grading another portion of the right of way of the said Belleville & St. Louis Railway Company with the said Company for a price of eighteen cents per cubic yard of dirt moved and graded, to be paid for from time to time upon estimates made by the civil engineer in charge of the construction of said railroad; that your orators were partners in the performance of the said work under the said contracts with the said Belleville & St. Louis Railway Company; that the partnership existed between your orator Alpheus Boling and the said Edward L. Thomas only as to their teams, scrapers, and other tools and implements used by them in and about the said work as they might do in that line, that as such partners your orators Alpheus Boling and Edward L. Thomas continued to do the grading of the right of way of the said Belleville & St. Louis Railway Company under the said contracts until about April 1st, A. D. 1893; that they had earned under said contracts up to that time about forty-two thousand dollars ($42,000); that they had furnished tiling and put same in at various points on said right of way with the

agreement that they were to have for the same what the material and work was reasonably worth; that under the same arrangements your orators have heretofore constructed various culverts along
229 said right of way in the road of said Belleville & St. Louis Railway.

Your orators further represent that various sums had from time to time been paid to your orators during the performance of the said work; that during the latter part of March, A. D. 1893, about the 25th day of the said month your orators performed their last work and furnished the last material for said work by them done and furnished as such partners under the said contracts with the said Belleville & St. Louis Railway Company.

Your orators further represent that on the said 25th day of March A. D. 1893, there was due to your orators for work under their said contracts for grading, tiling, making culverts, and materials furnished in and about the same, upon the road bed and right of way of said the Belleville & St. Louis Railway Company from said railway company, a balance of Fifty-three Thousand Dollars; that afterwards on the first day of April, A. D. 1893, the said sum of Fifty-three thousand dollars ($53,000) still being due and unpaid to your orators a settlement and adjustment of their partnership affairs with reference to their said work under their said contracts with the Belleville & St. Louis Railway Company and the respective amounts which each of them—your orators, Alpheus Boling and the said Edward L. Thomas—were entitled to, of the said sum due them, from the said Belleville & St. Louis Railway Company as aforesaid was had by and between the said Edward L. Thomas and your orator, Alpheus Boling. And in and by said settlement and adjustment of their said partnership affairs it was agreed by and between the said Edward L. Thomas and your orator, Alpheus Boling, that of the money due them for work and labor in grading the right of way of the said railway company, as aforesaid, your orator, Alpheus Boling, was to have the sum of Six Thousand Dollars ($6,000) in full of his share and interest in the amount due Thomas and your orator, Alpheus Boling, as partners as aforesaid, and that the said Edward L. Thomas was to have the remainder of the amount due the said firm as his individual share; that the said partnership of said Thomas and your orator, Alpheus Boling then and there ceased to exist, and your orator, Alpheus Boling, has been entitled to receive as his individual property the sum of Six Thousand Dollars from the said Belleville & St. Louis Railway Company, of which the said Belleville & St. Louis Railway Company had notice.

Your orators further represent that the said Belleville & St. Louis Railway Company consented to said arrangement between your orators, and thereafter understood and knew that it was to pay your orator, Boling, said sum of $6,000 as his part of said claim and in full thereof, and the balance to E. L. Thomas.

230 Your orators further state that no part of said sum of Six Thousand Dollars has been paid to your orator, Alpheus Boling, or in any manner secured to him by the said Belleville and

St. Louis Railway Company or any other person or persons for or on its behalf; that the said grading and work was performed by your orator as aforesaid as required by the said Belleville & St. Louis Railway Company and its assigns between the City of East St. Louis and the city of Belleville, both in the county of St. Clair in the State of Illinois, all of said right of way being situated in the County of St. Clair in the State of Illinois and described as follows, viz:

A roadway for railway purposes located on a tract of land, being part of lot 73 of Cahokia Common Fields, as recorded in book of plats "E," page 16, in the recorder's office of St. Clair county, Illinois, and more fully described in a deed of the St. Louis, Alton and Terre Haute Railroad Company, recorded in the recorder's office of St. Clair county, Illinois, in book 224, page 196, and which said roadway crosses with its middle line the north-westerly line of said lot 73 at a point 65 feet distant, at right angles to the middle of said St. Louis, Alton and Terre Haute Railroad, and runs in a south-easterly direction across said tract of land according to the terms of said above mentioned deed, together with its extension across lots 69, 70 and 72 of Cahokia Common Fields, as recorded in plat book "E," page 16, in the recorder's office of St. Clair county, Illinois, across lots 3 and 9 of section 9, township one (1) north, range nine (9) west, as recorded in plat book "A," page 395, of the recorder's office of St. Clair county, Illinois; across the north half of section 10, township one north, range nine (9) west; the east half of the south-east quarter of same section; across the south-west quarter of section 11, township one north, range nine west; across the north half of section 14, T. 1 N., R. 9 west; across lots 9, 10, in the north-west quarter of the south-west quarter, the east half of the south-west quarter, and lot 8, all a part of section 13, T. 1 N., R. 9 west, as platted in book "C," on page 11, recorder's office of St. Clair county, Illinois; across the north-east quarter section twenty-four (24), township one north, range 9 west; across the north-west quarter and the north part of the south half of section 19, township one north, range eight west, and extending into the south-west fractional quarter of section 20, township one north, range 8 west, in a south-easterly direction from a point 17 feet north of a stone, being the north-east corner of the south-east quarter of south-east quarter of section 19, township one north, range eight (8) west, for a distance of 842 feet. Also, the extension of the said above described roadway across the south-west fractional quarter of section 20, township one north, range 8 west, across a tract of
231 land acquired by condemnation suit of the Belleville City Railway Company against William Brandenburger, by proceedings in the County Court of St. Clair county, Illinois, and recorded in the County Court record 2, page 563 of said County Court records; across part of lot 11 of Miller's Subdivision of survey 649, recorded in plat book "A," page 4, of the recorder's office of St. Clair county, Illinois; across lots 10, 11, 14, 15, 16, 17, 20, 21 and 24 of St. Clair Addition to the city of Belleville, recorded in plat book "F," page 8, in the recorder's office of St. Clair county, Illinois; across lot 9 of Miller's Subdivision of survey 649, recorded in plat

book "A," page 4; lot 17 of survey 649, and lot 16 in the northwest fractional quarter of section 28, township one north, R. 8 west, as recorded in plat book "A," page 195, in the recorder's office of St. Clair county, Illinois; across lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the First Addition to St. Clair Addition, as recorded in book "G," page 15 of the recorder's office of St. Clair county, Illinois; and across lots 41, 42, 44, 45, 46, 47, 48, of Bonmon's Addition to the Town of West Belleville, now City of Belleville, all situated in the county of St. Clair and State of Illinois.

Your orators further represent that on the 25th day of March, 1893, the Belleville & St. Louis Railway Company, by its deed of that date, conveyed and transferred all of its rights, title, and interest in and to said real estate, comprising the said roadway and all easements therein, to one Samuel H. Leathe, for the consideration of one dollar and other valuable considerations; that the other valuable considerations were that grantee would assume and pay all claims against said Belleville & St. Louis Railway Company, including your orator's claim; that the said Samuel H. Leathe in pursuance of an arrangement and understanding then entered into without any further consideration, conveyed all interest to be acquired by the above mentioned deed in and to said road right, &c., of way, to the Belleville City Railway Company; that the latter company had full and complete notice of the indebtedness of the said Belleville & St. Louis Railway Company and accepted the said grant thereof with the understanding and knowledge that it would have to pay the said indebtedness, and that the amount due your orator, Alpheus Boling, was a lien upon said right of way of the Belleville & St. Louis Railway Company.

Your orators further represent that neither the said Belleville & St. Louis Railway Company, Samuel H. Leathe or the said Belleville City Railway Company will pay them the amount so due your orators or any part thereof, that your orator, Alpheus Boling, has never received or accepted any other security therefor than
232 his statutory right to a lien upon the above described right of way and road bed.

Forasmuch, therefore, as your orators, for use of Alpheus Boling, as aforesaid, are without remedy, except in a court of equity, they file this, their bill of complaint herein, making the said Belleville & St. Louis Railway Company and the Belleville City Railway Company parties defendant thereto, and pray that they may be summoned to appear on the first day of the September Term, A. D. 1893 of this court, and held to make full and direct answer thereto, but not under oath, their answer under oath being waived, that upon a hearing hereof an account may be taken as to the amount due your orator, Alpheus Boling, and the same adjudged and decreed to be a lien upon the right of way and road bed of the defendants hereinabove described, and in case the same is not paid to your orator by a short day to be fixed by the court, that the said right of way and road bed be ordered to be sold under the direction of the court, and out of the proceeds thereof, there be paid the costs and expenses of this suit and sale, and then the amount

so found to be due your orator, Alpheus Boling, together with the legal interest thereon, in accordance with the statute in such case made and provided.

And that your Honor will grant your orators such other and further relief as to your Honor shall seem meet, and to equity and justice may appertain, etc.

EDWARD L. THOMAS AND
ALPHEUS BOLING,
Late Partners, Who Sue for the Use of Alpheus Boling, Complainants.

R. D. HOLDER,
Solicitor for the Complainants.

Filed Dec. 2, 1893.

THOMAS MAY, Jr.,
Circuit Clerk, St. Clair Co., Ill.

And complainant proved that said cause was then pending in said court, but that said cause was dismissed by complainant therein before the hearing herein.

233 C. F. STEVENS, sworn for the complainant, testifies as follows:

Direct Examination by Mr. KOERNER:

Q. What is your name?
A. C. F. Stevens.
Q. What is your business and occupation?
A. Civil engineer.
Q. Where have you been employed since January of this year?
A. On a railroad between here and East St. Louis, that we call the Belleville City Railway.
Q. What time did you begin work on that railroad?
A. The second week in January of *in* this year.
Q. Who employed you, Mr. Stevens?
A. Well, in the first place I was indirectly employed by Mr. Chipley, who wished me to come and go with him and Mr. Leathe to look over some ground in East St. Louis, and a few days after that I was employed by Mr. Leathe.
Q. Who has paid you your compensation from that time on for that?
A. Mr. Leathe has.
Q. You began the second week in January, I understand?
A. Yes, sir, about that time; about the end of the second week. About the tenth or twelfth of January was about the time I first met Mr. Chipley about this work.
Q. What was the first work you did in the matter?
A. That was to go over the ground in East St. Louis with Mr. Leathe and Mr. Chipley, and Mr. Thomas was also present; at that time we went over the ground and took a general view with a view of obtaining the railroad facilities there for a terminal.

Q. What work, if any, did you do from the time of your first employment until about the end of March?

A. In February I made a survey of the line as now being built on the East St. Louis end and also a survey of the line as has been built since, from the former terminus of the road as left by Mr. Thomas; about a mile and a half from this city, the city limits; and in addition to that I went over the line of the road between St. Louis and Belleville very carefully and made an examination of it.

Q. Was there any property purchased by Mr. Leathe for railroad purposes during that time, that you know of?

A. I was told there was; I only know it from hearsay.

Q. Are you acquainted with this Snyder lot, lot 233 of Cahokia Commons?

A. I am.

234 Q. For what purpose was that acquired?

A. That was acquired for the purpose of a terminal on the river, for a coal dump and an incline to transfer cars.

Q. For this railroad?

A. For this railroad, yes, sir.

Q. Do you know of any trips, during that time to Cahokia for the purpose of purchasing right of way?

A. Yes, sir, during the month of March, Mr. Thomas and I went down to Cahokia and saw several land owners there who owned land in Cahokia-Commons, Mr. McCracken, Mr. Lavalle, Mr. ——, Mr. Laperch and Mr. Thomas made arrangements with them to obtain certain lands there that was to be used for a right of way.

Q. Was that subsequently obtained, that you know of?

A. It was.

Q. Do you know whether Mr. Leathe purchased those lands?

A. I saw him make payments on those lands to those people.

Q. Did you make a survey of the grading of work that had been done prior to your connection with the road?

A. Yes, sir.

Q. State to the court what amount of work had been done at that time?

A. It had been graded from a point on the east of the Cahokia rock road a few hundred feet out to a point on the Tilling land west of Belleville, and distant from here about a mile and a half, with the exception of a cut on some land owned by Mr. Ehrstein, and, I think, Emge or Atchison, and also a small piece of work on a farm owned by Mr. Thomas up at the road crossing at the top of the hill.

Q. State as to the amount of excavation and filling that had been done.

A. The excavation and filling amounted to 232,000 yards.

Q. Did you have any information in arriving at these figures from Mr. Thomas?

A. Yes, sir. I had a profile of the work, of the cuts and fills, and the elevation of the original surface and the center line; that was furnished me by Mr. Thomas.

Q. Did you use that in your survey?

A. Yes, sir. I verified that subsequently, and found that to be correct.

Q. And you used that in making your estimate?

A. Yes, sir.

Q. That was the work already done?

235 A. It was the work done prior to the first time I went over the road, which was some time in January.

Q. Are you acquainted with the prices prevailing for this work of this character?

(Objected to by the defendant; objection overruled by the court. To which ruling of the court the defendant then and there excepted.)

A. I am familiar with work of that kind.

Q. What would be a reasonable compensation for that work, according to such prices?

A. Well, there are different ways of letting work of that kind. One is by letting both excavation and embankment, or, as it is called, pay both ways; and the other is paying entirely by excavation, and paying a haul where you have to haul from a cut into a fill. The first way, about the average price for this class of work in this territory—that is, within a hundred miles of here—has been about ten cents per yard each way; so much for excavation, and so much for embankment.

Q. Ten cents for excavation and ten cents for filling?

A. Yes, sir, and if the excavation goes into the fill, then it is twenty cents paid for excavation, payable both ways, and if it is by excavation only and you pay extra for a haul over a certain limit, which varies; some roads it is 100, some 200 and some 300 feet. The work that was done on the line last summer had a limit of 100 feet haul and paid a cent a yard for each 100 feet further.

Q. Well, how much difference in the computation for this work?

A. Well, this work that has been done here, the figures on the excavation would be about fifteen and a half cents a yard, but if it had been paid both ways, it would have been a little more.

Q. That is fifteen cents for excavation?

A. Yes, sir.

Q. Now, what is the amount of the excavation—you are talking about the work that you have done?

A. Yes, sir.

Q. That you were doing yourself?

A. Yes, sir.

Q. This work that you found had already been done and you stated you figured that out a certain price for filling and for excavation?

A. Both ways would be about ten cents a yard.

Q. That would be about right?

A. Yes, sir, that is about the average price.

236 Q. Can you tell how that would have compared if the same work had been done on the other plan which you have mentioned?

A. It would have paid the contractor a little, a little more money if he had ten cents both ways, than if he had been paid by excavation and a haul.

Q. Ten cents both ways would be a little better for the contractor?

A. Yes, sir, a little bit better.

Q. During this time, prior to the 25th day of March, did I understand you to say, there had been 232,000 yards?

A. 232,000 in round figures and 300 are the exact figures.

Q. Can you remember an instance of re-surveying a piece of work, for which payment was made by Mr. Leathe, in which you found an excess of two thousand yards?

A. I do.

Q. Is that figured in that?

A. I have not taken that into consideration when I saw 232,000 yards.

Q. State that circumstance?

A. I had instructions to go and measure a piece of work that had been done some four or five miles from here, and I did so, and found it was about five thousand yards, and a payment had been made on an estimate of seven thousand and some six or seven hundred yards, leaving a discrepancy of over two thousand yards.

Q. Did you deduct that from the total amount of 232,000 yards?

A. No, sir, deducting that it would leave a net of about 230,000 yards.

Q. A net of 230,000 yards?

A. Yes, sir.

Q. Since the first of April that work has been carried on there; what work has been done?

A. In the month of April a contract was let for all of the grading from the river and from the connection with the Cinlogue road in East St. Louis out to Belleville.

Q. Has there been any raising of the railroad track?

A. In the bottom we raised for a distance of about three and a half miles, and some work was done out here.

Q. For a distance of three and a half miles the old grade was raised, you say?

A. Yes, sir.

Q. Why was that done?

A. Well, it was to get it out of that high water, and it was
237 thought advisable to do so, as this was the dry season, to raise the grade.

Q. Was it widened too?

A. It was widened, yes, sir. It was widened and raised; it is now thirteen feet wide.

Q. Do you know who paid the bills for the work since that time?

A. Mr. Leathe has.

Q. Can you tell us about what Mr. Leathe has paid for work on that road since that time?

A. On the grading?

Q. Yes, sir.

A. He has paid for 88,000 yards, about twelve thousand dollars, less a percentage that it is customary to hold back on the contractor until his contract is finished.

Q. Was there any other work done besides grading?

A. There is some culvert work done to the extent of about $1,200 and some stone has been purchased and delivered at a culvert that has not been built yet.

Cross-examination by Mr. E. L. THOMAS:

Q. Major Stevens, you say that about the tenth or twelfth of January you were taken by Mr. Chipley and Mr. Leathe over the river to view this land?

A. I did not say that.

Q. You were employed by Mr. Chipley?

A. I first met Mr. Chipley in relation to this land, and indirectly I became employed by Mr. Leathe, and that was very soon after the twelfth of January that we were across the river there together, but I do not remember the date.

—. Now, Major Stevens, you were employed by Mr. Leathe to examine this land prior to the time of his going into any contract or entering into any contract?

A. I do not know anything about the contract, or date of it at all.

Q. You were employed to examine it for him, were you not?

A. I was employed by him as engineer.

Q. To examine this line?

A. And make surveys and so forth.

Q. To examine it for him; was there not another arrangement afterwards made?

A. There was a further talk about it on the 21st day of February.

238 Q. Was there not a distinct employment after the 25th of March?

A. No, sir.

Q. Did you have any knowledge of or have you seen the contract that was entered into at that time?

A. Only indirectly—by hearsay.

Q. From Mr. Leathe himself?

A. He had made a contract with some people.

Q. That was with me to go on building the road?

A. To go on building the road, but as to saying that I had it directly from Mr. Leathe I cannot say that.

Q. Now you state you do not know whether this lot was bought for this road or not, do you?

A. Only what I was told, that is all.

Q. You do not know in whose name the title was taken?

A. No, sir; I never saw the deed.

Q. And do you know anything about what the contracts were or what they were to be, or anything of that kind.

A. Nothing.

Q. Now, Major Stevens, did you make a critical examination of this line, going over it several times prior to the 24th of January, 1893, didn't you?

A. Only once; I was over it once.

Q. You made figures on it?

A. Approximate figures, yes.

Q. You reported to Mr. Leathe, didn't you?

A. I made an approximate report, yes.

Q. You reported to Mr. Leathe in such a way; you made a report to him on this whole scheme, didn't you, and gave your opinions as a civil engineer?

A. Upon the whole scheme? We had a good many conversations relating to it.

Q. Did you not report to him and gave him your opinion verbally?

A. Yes, sir.

Q. Now, Mr. Stevens, in your estimate of the work done and that work that was not done, this place that you speak of on the Thomas farm is a matter of very little consequence?

A. That is a small thing.

Q. That is a very small thing?

A. That is a small thing.

Q. And there is another place at the road going to Emge's house, and there is another one up at Voeilinger's, those are a few
239 little places where it was not done on account of crossing the county road?

A. Yes, sir.

Q. Now, in your estimate, Mr. Stevens, did you have any cross-sections?

A. At what time?

Q. In your estimate of the old work? you say now it amounted to 232,000 yards?

A. I took some cross sections myself; I took the level out there and ran the level on the slopes so as to get cross sections.

Q. When did you do that?

A. Last week.

Q. Now, then, from the cross-sections that you took last week you made this estimate?

A. Not entirely from them, no; but I had your figures; figures furnished by you.

Q. On the profile?

A. Yes, sir, and had the center of the line.

Q. Now what width did you take it?

A. I just measured it, I had two men with me and I put a level on and measured it.

Q. How much did you allow?

A. I looked down the slope and took it as near as I could, a direct line on the slope one and a half to one.

Q. That is the way you did it?

A. At some places I allowed as much as four or five feet, because I knew the bank had been washed away by rains.

Q. So you could not tell accurately how many yards there was in that work at the time it was made?

A. Well, that is a matter of opinion Mr. Thomas, I believe I could tell within five per cent.

Q. You think you could tell within five per cent.?

A. Yes, sir, there is no doubt of it.

Q. Well that is all right, you are not more than a thousand cubic yards out of the way, if you say you can tell within five per cent. You believe you could come within five per cent.?

A. I am certain of it, because I have measured other and similar work, and have come within five per cent. of it, and I think I could on this.

Q. You know there is a great deal of shortage in fills after they stand a year or two without a road being built, or without being kept up a great deal, isn't there?

A. That would not enter into this case; I took your notes and your profile which gave the average level of the ground, and there is your grade line laid, and I took that.

240 Q. Then you could not get it without cross sectioning the fills?

A. Yes, sir.

Q. Did you not find cuts which extended out away beyond the road bed?

A. Yes, sir, I found some of them twenty-six, twenty-eight and think some places thirty feet in width, and I did find some of the cuts as much as sixty or seventy feet in width.

Q. Where we borrowed on the side?

A. Yes, sir, in fact there was one place down there where there wasn't really any cut at all on top of the hill, it had all been taken level the same as the surface.

Q. Now in your estimation, Mr. Stevens, where you had a fill and a cut, what do you say where you have to borrow?

A. That is embankment.

Q. You do not get anything in the cut then for that?

A. No, sir.

Q. Now what do you say in regard to this; I suppose you have put your price where the work is done under the ordinary methods of carrying on the grading of a railroad, carrying out a piece of the right of way where you have the right to borrow, and waste at such places as necessary to make it the easiest work; is that not true?

A. No, not particularly that; because it is always customary in the older states to haul out the cuts so as to make a suitable bank.

Q. Does that custom prevail here?

A. It does in a very great measure.

Q. Did your contractor not waste a great deal of ground on the sides when he saw fit?

A. No, sir.

Q. He did not?

A. No, sir.

Q. No place at all?

A. He had one place; there was a certain place, and that he wasted; and that is the only place.

Q. He did waste, however, at this place?

A. Yes, sir.

Q. Now, where you are not permitted to waste at a certain place; where you are compelled to haul it from say four, five, six, seven,

eight hundred or a thousand feet, and where you have no permission to waste at all, you can not waste; would that make any difference in the contract?

A. Yes, sir; you would be entitled to hauling wherever there is a haul.

241 The COURT: By this do you mean dirt that you cannot use?

Mr. THOMAS: That is, dirt that you cannot use, and have to haul it some place to get rid of it?

Q. This raising that you did down at the bottom, Mr. Stevens, was how much?

A. That varied from a foot and a half to four feet and a half.

Q. At some places it was four feet and a half?

A. I think that the heaviest fill that we had was four feet and six-tenths, and from that down to a foot and a half; it would average something very close to three feet.

Q. How far did you come toward raising up the earthwork of the Cairo Short Line on the side of it?

A. At places I made it the same grade; at old Jarrot station——

Q. We are on very high ground there?

A. Yes, that is high ground.

Q. There is not very much filling there?

A. Well, I had it filled there, four feet and one-tenth above your old grade, and then I ran that grade of line along until across the lake, and there the ground rises somewhat, and I raised my grade about two feet, and on this side of the lake, as far as we went, it is two feet higher than our present elevation down below.

Q. Well, you do not pretend to say now that you have it high enough to be above the water of year before last?

A. I was informed by Mr. Charrand, who lives there, that the high water mark of two years was at a certain point, and I took a level and, allowing a foot and a half for ballast, we are above high water of two years ago; we are the same elevation as the Cairo Short Line at Jarrot Station.

Q. I mean out further this way?

A. We are as high as that all along, and at some places we are higher.

Q. How many yards did you put in there, did you say, in that work?

A. Well, I put in about thirty thousand, above thirty thousand; some thirty-four thousand, is the estimate.

Q. And altogether you have put in about eighty-eight thousand?

A. Up to the first of November, there is an estimate yet to come.

Q. That is, the work that has not been done before?

A. Yes, sir.

Q. Well, you have not done eighty-eight thousand in the old work?

A. Well, that depends upon how you measure it; this figures out at 47,000 excavation, but if you allow and pay both ways it

242 will then make over eighty thousand on this end, but the contract calls for excavation measurements.

Q. And for hauling?
A. And for hauling; yes, sir.
Q. So, Mr. Stevens, the entire work that has been done was the building of one culvert, and the grading of about eighty-eight thousand yards.
A. Well, there have been a number of culverts put in, pipe culverts.
Q. Those you put in at the time you did the grading?
A. These pipe culverts; yes, sir.
Q. I mean large culverts, only one has been built?
A. That is all.
Q. You first commenced work in April?
A. They first began work there about the fifth or eighth of May, along there; I believe the contracts were made in April, yes, sir; they made the contracts then and began work the first week in May.
Q. So you have had May, June, July, August, September, October and November; this has been a very nice season for work, has it not?
A. Yes, sir; it has been a good season for work.
Q. What is your opinion as to whether or not that railroad could not have been completed to the bluff by this time if proper means and proper steps had been taken.

(Objected to.)
The COURT: Ask him whether it could have been completed?

Q. Could it have been completed to the bluff by the exercise of ordinary and reasonable methods of building a railroad?
A. I do not know, for this reason—our survey crosses the lands and tracks of other railroads, and I do not know how much litigation there would have been.
Q. But I am not talking about litigation, I am talking about building the road out to the bluff, if that matter of litigation were out of the way.
A. The physical work, do you mean?
Q. Yes, sir.
A. Why, yes; it could have been done.
Q. Very well done?
A. Oh, yes.
Q. There is no road crossing, Mr. Stevens, until you get into East St. Louis?
A. No, sir.
243 Q. And that road is what is called the Conlogue road?
A. And the air-line by the race-track.
Q. Well, I mean going to the river front?
A. That is the Conlogue.
Q. You know of no steps that have been taken to obtain these rights, do you?
A. I do not, only I was told by Mr. Leathe that he had completed arrangements to meet the officials of the Air-line road, that

was more than a month ago, to endeavor to arrange for a right of way.

Q. That was more than a month ago?

A. It was.

The COURT: To go to the river front you would have to cross the Conlogue and the Mobile and Ohio?

A. Yes, sir; and you would have to cross some land owned there by the Air-line Railroad.

Mr. THOMAS: That was some land that was in this survey of the yard that was made there for the purpose of going to the River and for the purpose of going to the Tudor Iron Works. It is on that survey?

A. Yes, sir.

Q. We bought a large body of land there for yard room?

A. Yes, sir.

Q. There is a small part of it that belongs to the Air-line road; all the rest was obtained months ago, was it not?

A. No, there is some owned by the Wiggins Ferry Company.

Q. Well, I mean that takes it up to the race-track?

A. No, the Wiggins Ferry Company owns a tract south of the race-track up to this Lavalle lot.

Q. That is, between the Lavalle lot and our main line, down below our yards. That is very little, say, twenty feet?

A. Yes, sir.

Q. Well, the land that is to be used to go out to the river front is owned entirely by the Air Line, is it not, excepting these rights of way?

A. That is owned entirely by the Air Line.

Q. Now, do you know of any steps having been taken in the early spring about obtaining this right of way?

A. Of the Air Line?

Q. Yes, sir.

A. Yes, sir; you told me you had been down to Evansville to see those people.

Q. Now, since I have had no connection with it, has there been anything else done?

A. I do not know.

244 Q. So, with these matters out of the way, the right of way and crossing those two railroads, it would have been easy enough, in your opinion, to have finished the road out to the bluff this summer?

A. Not this summer, no, because, right on this ground you are speaking of, until September, it was covered with water.

Q. Not prior to that time, at what time did the water come in?

A. The water came in there the early part of June, or last May.

Q. From the 25th of March on until the latter part of May it could have been done in there?

A. Yes, it could have been done.

Mr. KOERNER: I understand you to say that from about the first of May until this fall, a good part of this ground was covered with water and was too wet to allow work?

A. There was about three or four months that a part of the ground

was impossible to be worked; some of it was so wet in the beginning of the spring that you could not work on it when I first became connected with it; there was a piece on the Chartrand land and also a slough on the McNulty land, that I doubt if it could have been worked at any time after the middle of April.

Mr. THOMAS: These are very short pieces?

A. Yes, sir.

Mr. KOERNER: How was it in the lake at that time?

A. It was too wet for work there until this fall, that was done in the month of September.

Mr. THOMAS: Very little grading was necessary so that you could have laid your track in the bottom, couldn't you?

A. Oh yes, even if there was no grade you could have paid it on the surface.

Q. Well, you could have laid the track very easy?

A. Well, there was some three or four feet of water there.

Q. Not on the track?

A. In the summer time in the slough.

Q. Mr. Stevens you were doing this work for some railroad company? Lately this work was done for some railroad company?

A. Yes, sir.

Q. What railroad company?

A. The Belleville City Railway Company.

The complainants rested.

And thereupon the defendant to sustain the issue upon his part introduced evidence as follows, that is to say:

245 WILLIAM A. REISS, sworn for the defendant, testified as follows:

Direct examination by E. L. THOMAS:

Q. What is your name?

A. W. A. Reiss.

Q. Where do you live?

A. Belleville.

Q. What is your business?

A. Civil engineer.

Q. Do you know anything about the work done on what is known as the Belleville City Railway Company?

A. Yes, sir.

Q. Have you made surveys for that?

A. I made the greater portion of them.

Q. Where did you commence?

A. A line had been run through the bottom, then following up along the short line up to the neighborhood of Ogle's station; afterwards I was employed to run a different line, locating a line from this line parallel with the short line in the bottom up through the bluffs, as it is now located, and I made my survey to connect with the previous line that had been run through the bottom.

Q. Do you know who ran that line?

A. Mr. Graner and Mr. Hilgard ran that line.

Q. Now Mr. Reiss, who was engineer in charge of the work from the Conlogue road to the Grant mine, on the Tilling land?

A. I was.

Q. What was the nature of the work?

A. Of the ground work?

Q. Yes, sir.

A. Well, after leaving the bottom and going through the bluffs it is a very broken country; there are very irregular cross-sections running along the side of hills for about two miles, or a little over two miles.

Q. That is, up to the top of the bluffs, you mean?

A. Up to the top of the bluff.

Q. And from that on?

A. Then, after you cross the summit, the work is very heavy on this side of the summit, east of the summit.

Q. Now, Mr. Reiss, did you cross-section that work?

A. I cross-sectioned it, every bit of it.

Q. What did you do, as to the work, after it was completed?

A. This ground work?

246 Q. Yes, sir; this ground work.

A. I went along after it was graded; I passed over it.

Q. What did you do?

A. Well, I saw that it was put up to the proper grade.

Q. Did you make any measurements?

A. I made all the measurements; certainly.

Q. How was the grading in the bluff after you got to the summit—how was that as to width?

A. Well, I will have to refer to my notes.

Q. Generally, I mean, I do not care particularly.

A. Well, the grading through the bottom and up the bluff to what is known as the Thomas land, the embankments were made twelve feet crown, and the cuts were made eighteen feet wide; after leaving the Thomas land—no, I want to correct that—the grading, the embankments were made twelve feet wide through the bottom to the bluff, and then they widened it to fourteen feet; beyond the Thomas land they were made wide enough for a double track; that is, the greater part of it was.

Q. Now, in your opinion as an engineer, is it possible to get an accurate estimate of the work after it is completed, without having any cross-sections, and from a year or two after it is complete?

A. Oh, we can make an approximate estimate that will vary probably from five to ten per cent. from the true proportions.

Q. Now then you made an estimate of this work?

A. I made an estimate of this work, yes, sir, from actual cross-sections and levels taken.

Q. And at the time the work was done?

A. Before the work was done, I staked it off.

Q. What do you mean by an estimate, you made a calculation?

A. I made a calculation of the work.

Q. Now you have calculated that?

A. Yes, sir.

Q. What amount was there in the old work?

A. What I understand by the old work, there were two contracts, I believe, were there not?

Q. There were two contracts.

A. One running from East St. Louis to the south-east corner of the Thomas land and the other from the Thomas land to Belleville.

A. Well, one of the old contracts running to the south-east corner of the Thomas land, I estimated the work of that from station 0 which is the beginning of the line at the borrow pit beyond Jarrot station near the Cahokia road to Station 373, the south-east
247 corner of the Thomas land was 118,761 and seven-tenths yards; that is a complete estimate without the washing of the ditches from the canal, which is station 230 to station 373.

Q. The ditches were not included?

A. The ditches were not included in that estimate.

Q. The ditches amount to a good many yards, don't they, in the cuts up the bluff?

A. Say for a distance of 140 stations—a station is 100 feet—you could estimate approximately half of that distance for ditches.

Q. That would make several thousand yards more?

A. Yes, sir.

Q. Now I want to ask you another thing, what was the nature of the hauls in the bluff?

A. Some of that ground was moved a great distance.

Q. What do you mean by a great distance?

A. It was moved from 500 and 600 as high as 1,100 and 1,200 feet.

Q. Do you know anything about ditches being cut for the purpose of saving bridges?

A. Yes, sir.

Q. Is there any yardage given for those in that?

A. No, sir, they are not in this estimate.

Q. Now, then, what was the estimate from the south-east corner of the Thomas land to what is the station over there near the coal pit out here on the Tilling land?

A. From Station 373 which was the end of the Thomas land to 539 plus 65, which is the end of the grading as left by Mr. Boling, the amount of grading was 138,045 and three-tenths yards. In addition to that Mr. Bowling did grading on what is called Busch avenue in the western limits of this city, amounting to 7,487 and one-tenth yards making a total under the contract of 145,532 and four-tenths yards. Now this estimate included the work that was not done at Ogle's Station at Ehrstein's and Atchison's land, which was subsequently finished.

Q. How much was that work?

A. That work was 7,613 cubic yards; that work, however, is not complete.

Q. Do you know anything about the dirt that could not be taken out on account of not being able to get on the adjoining land there of Enge's? How much does that amount to?

A. This estimate is a calculation of the thing complete.

Q. How much would that be in your opinion, several thousand yards? That is not taken out there?

A. Yes, sir, I think so; I think probably five or six thousand yards went in there.

248 Q. Now, this calculation that you have made was taken from measurements?

A. From actual field notes taken at the time of staking out the work and cross-sections.

Q. You have cross-sectioned it?

A. Yes, sir, the ground work was of such a nature as to require a great many cross-sections.

Q. At some places at what distance did you cross-section?

A. Oh, ten feet.

Q. And some very large fills?

A. Some were very large fills, and there were some very large cuts.

Q. Now, how was that work as to hauling, do you know anything about the question of waste, or anything of that kind?

A. Of grading of the road from the Thomas land this way was done across property where no right of way had been obtained by the company, and one of the conditions of doing that work was that no ground was to be left on the side of the cuts.

Q. Now, how was that in the Schwinn land?

A. There we had to haul the dirt for a thousand or eleven hundred feet, and the same way in the next land, the Phillips land, there it had to be hauled the same way and the fill ground some of it had to be scattered over the field, and in the Stookey land, west of town, here some of the hauls there were as much as a thousand feet.

Q. Now, Mr. Reiss, in your calculations is there anything about any road that had to be filled up and fixed and lowered, or have you simply taken the road, the road-bed only?

A. I have taken the road-bed of the railroad.

Q. Do you know the work that was done at the Phillips road crossing?

A. Yes, sir.

Q. Well was there not very much of it?

A. In my estimate of the work I only figured the railroad property. Any additional work, such as digging out of trenches for culverts, and the digging out of trenches to carry off the water, and the digging down the approaches of highways, are not included in this estimate at all.

Q. There was a whole street block graded in West Belleville that was not included in this estimate, also?

A. Well, this street is.

Q. You have only included the main street there; the side street was graded, also?

A. Yes, sir.

249 Q. Now, in your opinion what is the amount of excavation work that was done now that *that* is not included in this number of yards?

A. From 6,000 to 8,000 yards. I have not the figures of that with me; I never made a complete estimate of that work.

Q. That is your opinion from your knowledge of the work?

A. From my knowledge of the work, yes, sir.

Q. What is the total of all of that that you have in your estimate from actual measurements?

A. 264,294 and one-tenth yards.

C. F. STEVENS, recalled for defendant, testified:

Mr. THOMAS: In your estimate here of the yardage you did not take any estimate of this street in West End?

A. No, sir.

W. A. REISS (continued):

Q. Now, Mr. Reiss, from what you know of the work, what do you say as to the price charged, eighteen cents for cuts and fills without haul on this part, from the Thomas land this way?

A. I think, if anything, it was a little low, considering the long haulage. The contract was let this spring at eleven cents, with a haulage; and, according to that, some of this work ought to have brought twenty-two cents.

Q. What do you think of the price that was paid for the 118,000 yards, without haulage or anything of the kind?

A. Thirteen cents a yard, that was the price of that. That contract was let three years ago this fall. I think it was a price that was customary at that time; perhaps a little lower than the general price.

Q. That contract provided for a haulage, did it?

A. That contract provided for a haulage, but I think there was no estimate made of the haulage.

Q. Not in this 118,000 yards?

A. No sir. I never saw the contract, but I understand that was the nature of the contract.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Do I understand you to say eighteen cents for excavation and embankments?

A. Yes, sir, both ways.

Q. Both ways?

A. Yes, sir.

Q. That you say is the general price?

A. Considering all the circumstances in connection with it; as a general thing contractors are paid for the ground work at
250 the end of the month, that is when the contractor gets his pay; in this work the contractor had to run his chances of getting his pay.

Q. Now, what would the ordinary price have been if these peculiar circumstances had not been so unfortunate?

A. Probably three or four cents less.

Q. So that would be taking into consideration that the contractor probably would not be paid?

A. Judging from the way that ground work is done here, why that price was a fair price.

Q. You mean eighteen cents?

A. Yes, sir, under the circumstances.

Q. Now, on this 264,258 yards, I understand that seven thousand yards more work was done besides?

A. No, sir, that seven thousand yards that is included in that work, that was done out on Busch avenue.

Q. I understood you to say, a while ago, that there were seven or eight thousand yards extra work that was done?

A. Yes, sir, that was in ditches and cutting down the highway approaches.

Q. Where are these ditches that you speak of?

A. There is a ditch that we cut into the bluffs probably a half mile long from the so-called nigger cabin to the Brouilette creek.

Q. Is not that dirt put into the embankment that was taken out of that ditch.

A. Some of it was.

Q. Was not all of it?

A. No, sir.

Q. Was that not intended for a borrow pit?

A. No, sir, we had plenty of dirt there without making a borrow pit.

Mr. THOMAS: You had to waste the other then?

A. We had plenty of dirt in the embankment there, or in the excavation there, to make the fills.

Q. On March 30, you made an estimate and presented it of the work you had done from station 415 to station 402, amounting to 7,613 yards did you not?

A. From 402 to 415, 7,613 yards.

Q. Was that correct?

A. That was correct, yes, sir, except that that is taken as being complete.

Q. What was the width of the road bed along there?

A. Twenty-two feet.

Q. What was the slope where this work was done?

251 A. Well, I cannot tell you that by memory—it is twenty-four feet wide.

Q. You say the measurement of this work was 7,613 yards, and Mr. Stevens says 5,280, what do you say to that?

A. I do not know.

Q. Is he right or wrong?

A. I do not know; it runs from station 402 to station 415, plus 54; that is 1354 feet long. I can give you my measurements if you want it.

Q. What experience have you had in the railroad service?

A. I have been connected with the Belleville and St. Louis Railroad for three years, and have been connected with the Atchison, Topeka and Santa Fe Railroad for one year doing office work, the principal work being the calculation of ground work, earth work.

Q. Did you do any field work?

A. Yes, sir, I did field work. I was connected with the Valley and Council Grove Railroad for eight months.
Q. Where is that?
A. In Kansas.
Q. What was your connection with that road?
A. As engineer, levelling engineer.
Mr. THOMAS: That is work very similar to this.
A. The leveling engineer has charge of the earth work *of* in railroading.

LUCIEN M. CHIPLEY, sworn for the defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Lucien M. Chipley.
Q. Where do you live?
A. St. Louis, Missouri.
Q. What is your business?
A. Promoter, financial agent and real estate.
Q. Do you know Samuel H. Leathe?
A. Yes, sir.
Q. Do you know Edward L. Thomas?
A. Yes, sir.
Q. Bart S. Adams?
A. Yes, sir.
252 Q. Well, now, I will ask you to look at this instrument?
(Handing witness the contract of January 24, 1893.)
A. Yes, sir.
Q. When were the names Edward L. Thomas and Bart S. Adams signed to that instrument?
A. On the 24th day of January, 1893.
Q. When were the names of Samuel H. Leathe and Lucien M. Chipley signed to that instrument?
A. Either on the 27th day of June or July.
Q. In what year?
A. 1893.
Q. When this instrument was signed by Thomas and Adams, what was said and done, of course the substance of it, as to signatures?
A. Mr. Leathe declined to sign it at that time; he wanted to take it under consideration and he took the paper with him.
Q. When did you next see the paper?
A. When I signed it at his house on the 27th of June, or 27th day of July.
Q. What was said at that time?
A. We were examining a number of papers of the Thomas and Adams papers. There were more than this. He had the happy faculty of any paper getting into his possession, if he got it into his hands once he would lock it up, and it would never be seen unless he was forced to produce them. This paper was among the rest; after looking over a number of papers he produced this and said "we

might as well sign that contract;" and he signed it and handed it to me to sign, and afterwards said to me, "now, we do not want to remember the date of signing this contract at all."

Q. I will ask you whether or not the contract was ever in force?

A. Never.

(Objected to.)

Q. What did you hear between the parties to it in regard to the contract?

A. That is between yourself and Mr. Leathe?

Q. Yes. And you and Mr. Adams, anybody else that was present?

A. Mr. Leathe declined to go into this enterprise after investigating the matters unless you procured the Belleville City Railway charter for the railway, and you wanted Mr. Leathe and myself to join in giving our pro rate stock which would be necessary to pay Mr. Charles W. Thomas for the charter of the Belleville City Railway, and he and I both declined to give up a share of stock, and he declined to enter into this contract at all.

253 Q. Who do you mean?

A. Samuel H. Leathe.

Q. Did he so state that to anybody?

A. Undoubtedly he stated that to me and stated that to you.

Q. Was that before, or after the contract of March 25th?

A. That he declined?

Q. Yes, sir.

A. That was prior to the making of the contract of March 25th.

Q. And after the delivery of this contract to him signed by both Thomas and Adams, state what did Mr. Leathe do as regards these things spoken of here?

A. Well, he had decided not entering into this enterprise.

Q. Was any action ever taken under that contract by Mr. Leathe?

A. Not that I know of.

Q. Was there or was there not any different arrangement made after this date?

A. Yes, sir.

Q. When was that?

A. That was at a meeting when the Belleville City Railway charter was taken, and the property which was acquired by Mr. Leathe, which he had purchased in his own name, was turned over and stock issued to him.

Q. In what company?

A. In the Belleville City Railway Company.

Q. When was that as to the time Mr. Leathe signed this, before or after?

A. Well it was a long time prior to the signing of this.

Q. How long prior to the time of the signing of it by Leathe?—it was after the date of it.

A. Yes, sir, it was after the date of it, but long prior to the signing by Mr. Leathe and myself.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Mr. Chipley, this paper signed by Mr. Adams and Mr. Thomas, what did they do with it, what did they do with this paper.
A. It was turned over to Mr. Leathe.
Q. And he has had it in his possession ever since?
A. As far as I know, yes, sir.
254 Q. Mr. Leathe, I understood you to say, proceeded to purchase land for right of way and terminals and so forth, did he not?
A. Yes, sir.
Q. Immediately after the execution of this paper, shortly after?
A. I think prior.
Q. To the execution of the document by Thomas and Adams?
A. Yes, sir, I think he purchased some prior to that. I am not positive of that, but he purchased some afterwards.
Q. Along in February and March?
A. I think so, some in February and March, yes, sir.
Q. What kind of property was that?
A. Well, that was coal land, and rights of way and this Snyder lot on the river front.
Q. Under this contract there was to be some stock assigned to you, was there not?
A. Under this agreement?
Q. Yes, sir.
A. Yes, sir.
Q. In what company?
A. That proposed here in the Belleville & St. Louis Railway Company.
Q. And it mentioned the other companies that might be formed, that you know of?
A. The same proportion, yes, sir.
Q. How much stock is that that should be assigned to you?
A. In the railway company?
Q. Yes.
A. $78,300 worth of stock.
Q. And the same proportion in the other companies?
A. Yes, sir.
Q. What other companies were meant in which that would apply?
A. In the Crown Coal Company.
Q. I will ask you whether subsequent to this there was $78,300 of the capital stock assigned to you?
A. What time do you refer to?
Q. At any time subsequent to the signing of this contract?
A. By Mr. Leathe and myself?
Q. No, sir, prior to the time you signed it?
A. No, sir.
Q. There never has been that stock assigned to you?

A. No, sir, not in the Belleville & St. Louis Railroad Company. No, sir.

255 Q. Well, in the other, in the Belleville City Railway Company?

A. Yes, sir.

Q. What amount?

A. $78,300.

Q. Was there stock assigned to you in the Crown Coal Company?

A. Yes, sir.

Q. In what amount?

A. 313 and one-fifth shares.

Q. Is that the same proportion?

A. That is, two-fifths, yes, sir.

Q. Do those shares still stand in your name?

A. Yes, sir, so far as I know, unless they have erased them; the books are in their possession, and you cannot tell what they are doing.

Q. You have not assigned them to anybody?

A. No, sir.

Q. You say, afterwards there was another arrangement made?

A. Yes, sir.

Q. That arrangement was made to take in the Belleville City Railway charter?

A. Yes, sir.

Q. That is the agreement that is spread upon the records of the Belleville City Railway Company?

A. Yes, sir.

Q. That refers to a subsequent arrangement.

A. Yes, sir.

Q. Now, then, why was there assigned to you $78,300 of the capital stock of the Belleville and St. Louis Railway Company?

A. As promotor.

Q. You can explain to this court what that means?

A. A promotor is a man who has got the ability and confidence to get men with money and get them to put it into an enterprise, and back it up with their wealth; Holmes and Koerner could not do that if they tried; Holmes told me himself he tried it for four years.

Q. Was there the same consideration for your stock in the Crown Coal Company?

A. Yes, sir. It was originally intended to make but one corporation out of the Coal Company and the railroad, and the laws of your state over here would not permit it, and so we organized two companies.

Re-examination by Mr. THOMAS:

Q. I understood you to say that you never owned any Belleville and St. Louis Railway Company stock?

A. I never owned a share of it, sir.

256 BARTLETT S. ADAMS, sworn for the defendant, testified as follows:

Direct examination by E. L. THOMAS:

Q. What is your name?
A. Bartlett S. Adams.
Q. Where do you live?
A. St. Louis.
Q. Are you the Bart S. Adams mentioned in this instrument? (Showing witness the contract of January 24, 1893.)
A. That is my name signed there.
Q. Who signed it?
A. I did.
Q. When did you sign that, what were the circumstances?
A. I signed it the same time you did.
Q. What was done with the paper, then?
A. Why, you either turned it over to Mr. Chipley, and he turned it over to Mr. Leathe, or you turned it over to Mr. Leathe directly, I don't remember which.
Q. Was Mr. Leathe there present?
A. Yes, sir.
Q. What was done there? Did he, or did he not, sign it at that time?
A. He did not sign it there.
Q. What did he do with it?
A. He took it home.
Q. I want to know whether or not you ever heard him mention the contract in your presence?
A. Well, I know that it was mentioned that day.
Q. Was it mentioned at any other time? Did you ever hear anybody ask him whether he had signed it or intended to do it, or what?
A. I am not positive, but I believe you asked him if he had ever signed it?
Q. What did he say to that?
A. He had not.
Q. Did you ever hear him say anything in regards to not executing that contract, that he wanted the Belleville City Railway charter?
A. I did not hear Mr. Leathe, but I heard Mr. Chipley say that he had to have the charter of the Belleville City Railway.
257 Q. Was that in the presence of Mr. Leathe?
A. I am not positive.
Q. But you know as to whether that was signed?
A. It was not signed.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Mr. Adams, you are a son of Captain W. A. Adams?
A. Yes, sir.

Q. Do you know that your father interested himself in this enterprise, during his life-time?

A. Yes, sir.

Q. Do you know that he advanced some money towards it?

A. Yes, sir.

Q. That money is still in the enterprise, is it?

A. Yes, sir.

Q. Do you know how much he invested in it?

A. Between twenty and twenty-five thousand dollars.

Q. Did he purchase any lands or right of way in connection with it?

A. Yes, sir.

Q. He took them in his own name, didn't he?

A. Yes, sir.

Mr. THOMAS: That was the land, not the right of way?

A. No, sir.

Mr. KOERNER: After he died you conveyed it to the Company?

Mr. THOMAS: To me.

Mr. KOERNER: He took deeds to it in his own name?

A. To some of them, because we gave the deeds to them afterwards.

Mr. THOMAS: That was lands, but not right of way?

A. I don't know about the right of way.

Q. And after he died the deeds were made out to the Company?

Mr. THOMAS: To me that was.

A. Yes, sir.

Mr. KOERNER: The deeds he took in his own name?

A. He bought some lands, now I don't know whether it was right of way or what it was.

Q. He held the title to it, and afterwards you conveyed it to the Company?

A. To the Company or Mr. Thomas, I don't know which.

Q. Now, are you acquainted with the terms of this contract, Mr. Adams?

258 A. Well, I was at the time; I don't know whether I remember them now.

Q. Do you remember that feature of it which states that Mr. Thomas and Adams were to be paid after the money which was needed for the completion of the road had been obtained on bonds?

(Objected to.)

A. Yes, sir.

Q. How was that?

A. Mr. Thomas and myself and Mr. Taylor had different amounts in the Company, and Mr. Leathe was to put the money into the thing—into the Company—and carry it through, and bonds were to be sold then, and Mr. Leathe was to receive his money, and then Mr. Thomas and myself were to receive ours.

Q. And when the Companies were formed a certain amount of stock was to be assigned to you? Do you know how much that was?

A. No, I had stock in the old original company.

Q. Now, was not the stock assigned to you in accordance with the amount fixed by this contract?

A. I had some stock assigned to me?

Mr. THOMAS: In the Belleville & St. Louis Railway Company?

A. I had some in the Belleville & St. Louis Railway Company.

Mr. KOERNER: You turned in the stock to Mr. Leathe, in accordance with this contract, did you not?

A. I turned in the stock to him, yes, sir, and some of the bonds.

Q. And they assigned to you Fifty Thousand Dollars of the stock?

A. I do not know; I could not tell you; it was two-fifths.

Q. Mr. Adams, you were well aware that the outlay which your father had made for the old company was to be paid only after the completion of the road, and after the money expended by Mr. Leathe for the completion of the road had been paid to him, was it not?

A. Well, after that Mr. Leathe and Mr. Thomas and myself were together and made a new arrangement about what was to be done; Mr. Thomas and father had other arrangements that I did not know anything about.

Q. I mean the arrangements in this contract that provided——

A. That he was to get his money back, yes, sir.

Q. After Mr. Leathe got his money back for the completion of the road?

A. After he got back what he put in.

259 Q. Was there ever any change in that understanding?

A. Not that I know of, only that we did not get the money back.

Mr. THOMAS: Did you not hear Mr. Leathe refuse to go into that contract?

A. I know he entered into a contract with the Belleville City Railway afterwards.

Q. Don't you know that Mr. Leathe refused to enter into this contract?

A. Well, I know this paper was drawn up, but I do not know when he signed it.

Q. You know that up to the last time you heard of it, he refused to sign it?

A. Yes, sir.

Q. You don't know whether he ever did sign it or not?

A. No, sir; I don't know that.

Q. This arrangement made on the 25th day of March was entirely outside of this contract?

A. Yes, sir.

Mr. KOERNER: The only trouble that you speak of, Mr. Leathe and Mr. Chipley wanted to use the charter of the Belleville City Railway Company, instead of the Belleville & St. Louis Railway Company, was it not?

A. They wanted the charter that the other railroad had.

Q. He wanted that for the purpose of constructing this road was it not?

A. I don't knew whether it was the same old railroad company or not.

Q. Well, it was the same company, the road, was it not?

A. Well, I don't know whether it was the same old company; it was the same one after we started in on the new deal, yes, sir.

Q. There was only one railroad to be built, and that was from Belleville to East St. Louis, was it not? Whether it was under the name of the Belleville & St. Louis Railway or the Belleville City Railway, that did not matter?

A. I don't know whether it did or not.

Q. You did not care anything about that, did you?

A. No; I did not care what kind of a name it had, as long as it was built.

Q. The coal enterprise was one which was increased after Mr. Leathe went into the arrangement and was to be an adjunct and part of the railroad, a part of the enterprise, was it not?

A. Well, it was to be owned by the same stockholders.

Mr. THOMAS: Mr. Adams, don't you know that objections
260 were made to purchasing the charter of the Belleville City Railway Company?

A. Well, I understood that you did not want to get it.

Q. At the time you turned over this stock and bonds to Mr. Leathe, it was supposed that he was going to execute this contract of January 24th?

A. Yes, sir.

CHARLES W. THOMAS, sworn for defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?

A. Charles W. Thomas.

Q. Where do you live?

A. In the City of Belleville, County of St. Clair, Illinois.

Q. What is your business?

A. I am a lawyer, that is, I am practicing law.

Q. When did you first become acquainted with Mr. Leathe?

A. Some time the latter part of February or the first of March, 1893.

Q. What was the cause of that?

A. I was invited to go to the office of Mr. Chipley, who seemed to be acting as the financial agent of Mr. Leathe, the object of the invitation was to discuss the question of using the charter of the Belleville City Railway which I owned or a very vast majority of the stock; that was the occasion of my going there.

Q. Well, what became of that discussion?

A. It was either during the last days of February or the first of March that I went over at your request to have an interview with these gentlemen I informed them of the provisions of the charter, and what had to be done to preserve it. Mr. Chipley and Mr. Leathe were present and yourself and myself, and part of the time probably in the presence of Mr. Adams and Mr. Taylor, but they seemed not very much interested in the matter. Mr. Chipley did most of the talking about the matter, and we discussed the terms upon which I would consent to part with my stock in that company and the details of some plans that might be arranged whereby that charter could

be used to build a railroad. I told these gentlemen, I would not part with my stock unless the amount to be expended in it at the time was paid up in good faith and for value. And Mr. Leathe and Mr. Chipley agreed that would be done and I set about to devise a plan whereby that might be effected and explained the plans in
261 the presence of Mr. Leathe and Mr. Chipley. At the time I went there this contract which you have here in evidence, was shown to me by Mr. Leathe and Mr. Chipley as well as a detailed list of the indebtedness of the Belleville & St. Louis Railroad Company, which was in their possession; I looked at both of these instruments and saw that they were executed by Edward L. Thomas and Bart S. Adams, and I informed Mr. Chipley that that contract could not in the nature of things be used; if the other charter were to be used, other parties having intervened and other circumstances, that would make this contract impractical. This was agreed to by Mr. Leathe and Mr. Chipley both. We then after a great deal of talking—my recollection now is that I made one or two written memoranda of plans that might be devised to which objections were found by Mr. Leathe himself and I thought well founded; and at length in the course of the negotiation this agreement was arranged which appears in the record of the minutes of the Belleville City Railway Company.

Q. That was the 25th day of March, 1893?

A. Yes, sir. Mr. Leathe was to pay as his stock, as I explained to him prior to the whole arrangement, by the purchase of the river front and the necessary right of way, and was to get the Belleville and St. Louis Railway, and turn over that property in part payment of his stock, and was to further agree to build the road and float the bond and was to protect it from foreclosure for one year, and that was to be considered full payment for all the stock but five shares. This was all carried out afterwards, and the contract was placed on the minutes of the Belleville City Railway Company.

Q. Has this contract of January 24th anything to do with the present parties?

A. No, sir, it could not have any connection with it; it is impossible of execution.

Mr. KOERNER: Do you say it is impossible?

A. It seems to me so from the mere statement; that is what I think about it. I never received a share of the Belleville and St. Louis Railway stock, and never considered it at all.

Q. Well, was there anything said as to whether this contract was to govern or not?

A. It was positively stated by Mr. Chipley and Mr. Leathe that that contract had no application to the enterprise. It was explained by me fully to him, and he assented to it. I am not very positive, but it seems to me in April, I heard Mr. Leathe say in conversation with you that the contract had never been signed.

262 *Cross-examination.*

Cross-examination by Mr. KOERNER:

Q. You had no shares of stock in the Belleville and St. Louis Railway Company?

A. No, sir; no interest whatever.

Q. What you were doing there was to sell your charter of the Belleville City Railway?

A. Yes, sir.

Q. And you were to obtain for that a certain portion of the stock and bonds?

A. No bonds, no, sir; but stock.

Q. Also in the coal enterprise?

A. Yes, sir. There was a coal enterprise, the Crown Coal Company, as heretofore stated was reorganized; that is, the capital stock was increased; and the same proceeding was gone through with that company that was gone through with the Belleville City Railway Company with respect to the payment of the stock, Mr. Leathe purchasing all the ground of the Crown Coal Company in payment of his stock, just as he did in the Belleville City Railway Company.

Q. As far as you were concerned you got certain shares of the capital stock in both companies?

A. Yes, sir.

Q. That was your connection with the enterprise?

A. That is as far as I was interested in it, yes, sir.

Q. The object of this meeting was to devise some means by which the charter of the Belleville City Railway Company could be utilized to construct and operate a railroad which had then been partly built by Mr. Thomas?

A. That was not the object of the meeting at all. The charter of the Belleville City Railway Company contemplated a much larger enterprise, a very much larger one than Mr. Thomas was able to handle under his charter, and in fact Mr. Leathe went so far with the Belleville City Railway Company as to obtain material for a portion of the road that never could have been constructed under the Belleville & St. Louis Railway Company charter.

Q. It was supposed that the Belleville City Railway charter presented more advantages than the old charter?

A. That was the understanding, yes, sir.

Q. And for that reason they wanted it, and you had that charter for sale?

A. Mr. Leathe said he would not go into the enterprise unless that charter was put in.

Q. But Mr. Leathe did not propose to pay anything for it himself?

263 A. He insisted that Mr. Thomas surrender his stock, which he did; this same stock that I got in the Belleville City Railway and the Crown Coal Company he had to surrender; Mr. Thomas had to surrender that from the amount that it was originally intended he should have under the old arrangement.

The COURT: Mr. Thomas, I will ask you, in this arrangement,

what was to become of the Belleville & St. Louis Railway Company?

A. Mr. Leathe was to buy that property in consideration of the payment of its debts and was to turn it over in payment of his stock, which he did; he deeded it to the Belleville City Railway Company.

Mr. KNISPEL: And paid up his shares?

A. He paid up his shares; he took the stock, subject to a levy of one hundred per cent. which had already been made, which was the only way he could pay by giving value, by turning in the property of the Belleville & St. Louis Railroad, the Snyder lot, and agree to build the road, float the bonds and to protect if from mortgage for one year; that is the consideration he gave in payment of his stock.

Q. Did you draw this paper and sign it?

(Handing witness a paper.)

In case Edward L. Thomas makes an arrangement and contract with Samuel H. Leathe and his associates to construct the railroad of the Belleville and St. Louis Railway Company upon such terms as he may agree upon, I will assign to the said Edward L. Thomas 490 shares of the capital stock of the Belleville City Railway Company, to 483 shares of which I have now the legal and equitable title and to 7 shares of which I have an equitable title, the same being subject to my order. I will also endeavor to procure, and have no doubt I can procure, the seven shares now held by Edward Abend and Henry Abend, all of which I will assign with the said 483 shares. In return for said stock said Edward L. Thomas is to assign to me $25,000 of his stock in said Belleville and St. Louis Railway Company, and I am to receive one-twentieth of all profits to be derived from it and all enterprises undertaken in connection with it in which said Edward L. Thomas participates.

CHARLES W. THOMAS.

February 17, 1893.

A. I signed this, yes, sir.

Q. That is your handwriting?

A. Yes, sir. That was not carried out; that was one of the various memoranda I made during the progress of the negotiations; I think there are three or four of them. That was not carried out. Mr. Leathe assigned me the stock.

264 BISSEL THOMAS, sworn for the defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Bissel Thomas.
Q. Where do you live?
A. Belleville.
Q. What is your business?
A. Practicing law.
Q. Are you acquainted with Mr. Leathe?

A. Yes, sir, I know Mr. Leathe.

Q. Were you present at any time when any conversation took place between Mr. Leathe and Edward L. Thomas?

A. Yes, sir, I was present several times. The first time that I can recall that I met Mr. Leathe and was formally introduced to him was in Mr. Needles' office about the first of February or perhaps a little later, some time the fore part of February or latter part of January, Mr. Leathe and Mr. Chipley came into Mr. Needles' office with you, and you spoke about the affair of the Belleville and St. Louis Railway Company.

Q. Now, then, what was said there as to this contract?

A. I remember you asked Mr. Leathe if that contract had been executed yet, and he said no he had not, that he was still considering it, and you seemed rather urgent in your insisting that he should sign it immediately, executing it; you said it had been delayed some time then; I forget what else, but you seemed annoyed at its not having been signed before that time, you insisting that he should sign it and that it be entered into formally.

Q. Do you remember any negotiations that were going on then about land that will direct your attention to the time?

A. Yes, sir. Dr. Kohl was engaged in purchasing the Snyder lot about that time, or had purchased it; at any rate, you were discussing the matter at that time.

Mr. KOERNER: Dr. Kohl was selling it, you mean?

A. Dr. Kohl was buying it for Mr. Leathe as I understood it.

235 EDWARD L. THOMAS, sworn for the defendant, testified as follows:

My name is Edward L. Thomas; I live in the City of Belleville, and have been a lawyer; I will begin with the negotiations with Mr. Leathe; in the early part of January, 1893, perhaps in the latter part of December, 1892, I commenced negotiations with Mr. Leathe in regard to taking hold of the Belleville & St. Louis Railway, which culminated in the making of this instrument signed by Mr. Adams and myself. After it was signed by Mr. Adams and myself, on the day it bears date, I handed it to Mr. Leathe and asked him to sign it. He took it and declined to sign it at that time, and said he wanted to further consider it. He did not sign it at that time, neither did Mr. Chipley. From then on, from time to time, until about the first of March, or perhaps a little later, I urged him a number of times to execute this contract, asking him if he had executed it; he always saying that he had not, and always giving some excuse in regard to it, up to the first of March, or about that time, when he expressed his determination not to enter into it. After it was signed by Mr. Adams and myself, Mr. Leathe purchased the property that he has introduced the deeds for, from Mrs. Snyder, and the coal rights, and took the title in his own name upon my statement to him, as he had not signed this contract, that that would probably be the best way, he telling me that he had not, but probably would, and the transfers could be made afterwards. Mr. Leathe never demanded any stock in the Belleville & St. Louis

Railway Company, and never owned any. He took up under this instrument the stock owned by Mr. Adams, but took a note from Mr. Adams, so he informed me, and when he took up my stock he took up a note also from me.

About the first of March, or along that time, Mr. Chipley and Mr. Leathe—we were meeting them nearly every day—by some means got knowledge of the Belleville City Railway charter, and after an examination by them, they determined that they must have that charter. I objected to purchasing that charter, objected continuously to purchasing it. Finally they insisted that it should be purchased, and then I went to Mr. Charles W. Thomas and negotiated with him for the purchase of it, and insisted that Mr. Chipley and Mr. Leathe, and those interested, should surrender their proportionate share of the stock necessary to purchase the charter; that Mr. Chipley and Mr. Leathe declined to do so; so I then insisted that Mr. Chipley and Mr. Leathe execute the contract of January 24th; Mr. Leathe declined to execute it, and told me he
266 would not go into the enterprise at all unless under the Belleville City Railway charter, and unless I would purchase that why he would not be in it, and I then negotiated with Mr. Charles W. Thomas about the purchase of the charter of the Belleville City Railway Company.

About the middle of March after an arrangement had been made with Charles W. Thomas, Mr. Leathe, Mr. Chipley, myself and Mr. Charles W. Thomas met in the office of Mr. Chipley in the city of St. Louis. Mr. Charles W. Thomas there spoke of this contract and distinctly told Mr. Leathe that it had no application to the parties that were interested in the Belleville City Railway charter, and that it would have to be outside of that that he had no interest in it and that a new contract would have to be entered into, to which Mr. Leathe assented, there stating that he had not executed this contract. Mr. Leathe from that time on acted entirely under the Belleville City Railway charter. On the 25th day of March a new contract was entered into. Prior to the entering into the new contract he stated distinctly and expressly that the old contract was not in force and at no time until Mr. Leathe commenced the litigation in regard to this railroad did he ever claim to me that he had executed this contract or even told me that he had executed it. After the middle of March this contract was never spoken of or mentioned, and I never paid any attention to it until the 22d day of August, 1893; then he told me he had signed that contract. I told him he must have signed it after the contract of March 25th. and he made no reply to that and I did not know whether he had signed it or not.

Q. What was he to do for his stock, for his part of it?

A. He was to pay for his stock by the property he took from the Belleville & St. Louis Railway Company and the deeds.

Mr. KNISPEL: The deed recites for a consideration of one dollar and other valuable consideration moving from him to the company.

Mr. ROPIEQUET: What were the valuable considerations?

A. That he was to pay the indebtedness of the company. At that time this statement was mentioned; that statement set out the in-

debtedness; there was part of the grading that was estimated but not done.

Mr. KNISPEL: This subsequent contract of March 25th, that is the contract that is contained in the minutes of the Belleville City Railway?

A. Yes, sir, that is the contract.

Q. Now, this estimate, was that ever submitted to Mr. Leathe to your knowledge, had he any knowledge of it?

A. That was submitted to him; yes, sir. This is a copy of
267 the account introduced by Mr. Koerner. That was submitted to him, yes, sir. That was submitted to him on the twelfth of January, and he had it all the time. He made a full examination of this matter; he had Mr. Stevens make an examination of this matter so far as an engineer's business went.

Q. Mr. Leathe did?

A. Mr. Leathe did; some weeks prior to any of these contracts.

Q. At the time this arrangement was made by paying the debts did he then have any knowledge of this?

A. Certainly; this account was referred to in this letter.

Q. Did Mr. Leathe ever object to any of these items?

A. Not to me.

Q. At any time before the litigation?

A. He never has to me at all, at any time; this eighteen cents a yard for both cuts and fills was all fully explained to him.

Q. Was there any objection made to that charge?

A. Not at that time, no sir, not ever to me; I never knew that he made any at all. The first that I heard that he had objected to was here lately, not about those items, but some smaller items, perhaps.

Q. Had that work been done by contract?

A. The first contract ran up to the south-east corner of what is called the Thomas farm, that had been done under contract by Mr. Boling and myself with Capt. Adams; Capt. Adams had several bids, one of them, the lowest, was for 13 and 100 feet haul, and we entered into a contract with him for that price.

Q. That was for excavation?

A. Yes, sir. There was another outside party bidding on it.

Q. You were the lowest bidder?

A. No, we were not either the lowest or the highest bidder; the lowest bid was thirteen cents, and Captain Adams, in view of the fact that he did not have the funds regularly along, wanted to have somebody have it who was interested in the enterprise and who would not press him for funds.

Q. What was it let out at?

A. At thirteen cents, with a hundred feet haul, but we never had any haulage and never claimed any.

Q. Whatever haulage there was you never made any charge for it?

A. No, sir; the haulage should have been paid, but the way it was carried on was such that those matters were not separately looked after, and it would be impossible to fix it. Some of the haulage, on

some there was no haulage; the season was very dry, and we took it right out of the bottom of the lake there.

268 Q. Didn't we have two or three successive dry seasons?

A. Yes, sir; we had several dry seasons; in the fall of 1890 the lake was very near dry, and we took it right out of the bottom of the lake. Some of it we had to haul all the way from the borrow pit, 600, 700, 800 feet; we did not have much funds to do the work with; we went along with it easily, and did not want any more money than just enough to pay the running expenses.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. How long have you been at work on this enterprise, Mr. Thomas?

A. Since March, 1889.

Q. Did you ever have anybody engaged to interest people in this enterprise?

A. Not prior to the death of Capt. Adams; since that time.

Q. Since that time?

A. Yes, sir.

Q. Did you have any one engaged to see Mr. Leathe about the matter?

A. No, sir, excepting I was told by Capt. Adams that he had a party, and Capt. Adams took me to Mr. Chipley and there I met Mr. Leathe. I first thought that Mr. Chipley was acting for me, but I afterwards found that he was acting for Mr. Leathe.

Q. Before you found Mr. Leathe you had been negotiating with other parties?

A. Yes, sir, a number of them. I gave up my law practice on the first of January, 1890, and devoted my time to this matter exclusively.

Q. You were trying to get somebody to help build this road?

A. Certainly, all the time. All my time.

Q. You wrote a letter to Mr. Leathe?

A. I wrote a letter.

Q. You had met him before?

A. That was after I had met him; I am not positive, but I think I had met him perhaps two weeks before.

Q. This letter was written on the 12th day of January?

A. Yes, sir.

Q. And this contract of January 24th was your idea of what ought to have been done?

A. That was my idea at that time. I will state here that I should like to abide by it if I could; I should have preferred it to any other contract and would do it to-day if I could do it.

Q. You are willing to abide by it to-day?

A. If I could, yes, sir; it is impossible to do it: I had a con-

269 tract with him and that provides for it, for the purchase of my coal for $16,000; that letter is made a part of the contract, it is referred to by the contract, and made a part of it.

Q. What was the enterprise, Mr. Thomas, what were you trying to interest Mr. Leathe in?

A. To build a railroad from East St. Louis to Belleville, but the particular thing was to get to the coal fields and get the coal, that was the particular thing to get the coal to the river and use it for coaling boats.

Q. That was the scheme you wanted to interest him in?

A. Yes, sir, that is what I wanted to interest him in.

Q. You say in this contract of January 24th that he was to advance the money to take up four bonds held by Mrs. Johnson--$4,000 with interest and $750 on the First National Bank with interest; did he do that?

A. He did.

Q. When?

A. About the first of February, or perhaps very soon after Mr. Adams and I signed the contract.

Q. How many bonds were there, do you know?

A. Mrs. Johnson had two bonds and two bonds were pledged as collateral for this note on the Third National Bank.

Q. You agreed to place $150,000 of bonds in his possession?

A. They were to be placed in his possession so they could be canceled, that was the idea of it.

Q. Well, he got possession of the bonds?

A. Yes, sir. He got possession of eight thousand that I had, that I gave him expecting him to enter into this contract, and he got $90,000 from the First National Bank of Belleville; he got into possession of them by entering into a contract with that bank.

Q. He had to enter into a contract to get them?

A. He entered into a contract to return them new bonds or pay the money or bring the old ones back.

Q. Now, Mr. Thomas, do you know Mr. Leathe after the execution of this contract, doing anything towards forwarding the railroad enterprise?

A. He did, he purchased the Snyder lot and took it in his own name for reasons that I have before stated; he purchased those coal properties that I have contracts for.

Q. Who did the proposition come from in the first place to take hold of this Belleville City Railway charter?

A. Mr. Chipley.

Q. It was supposed to possess some superior qualities to your charter?

270 A. I did not think it did and therefore objected to it all the time, but Mr. Leathe said he would not go into the enterprise at all unless he got that charter.

Q. He had entered into it?

A. He had taken everything in his own name; he had not taken anything at all in the name of the company.

Q. He had put up a great deal of money, hadn't he?

A. He had put up a good deal of money.

Q. And was of no count except to this railroad, was it?

A. Well, if Mr. Chipley was here he could tell you how that was;

I only know from him. Of course, I could not tell what was his intention except by hearsay from Mr. Chipley.

Q. This two or three thousand dollars here that was put up?

A. That was put up.

Q. Nobody paid him back, did *there?*

A. He got our notes for it and that was not in accordance with the contract. The contract did not provide that we should give him our notes; he did not advance it to the parties.

Q. Was it not your duty under the contract to deliver to him those bonds?

A. Yes, sir, but it was not my duty——

Q. He was compelled to put up the cash to get them?

A. Yes, sir, and he took our notes for it.

Q. Now after you delivered this to him were you not, to assign him the stock in the Belleville & St. Louis Railway Company?

A. Certainly.

Q. Did you not make an effort to put him in possession of the stock?

A. I did at the time, yes, sir, assuming that he was going to enter into this contract, certainly.

Q. Why did you not put him in possession?

A. Because at that time it was in the hands of Mr. Stoddard of the Third National Bank on a certain contract that I had with Mr. Gould and Mr. Kent, and Mr. Gould was absent from the city, and he had the contract locked up and Mr. Stoddard insisted upon seeing the contract before delivering up the stock. That was all there is of it. I want to state I gave Mr. Leathe the receipt from Mr. Stoddard so he could get it and he had it for some time and when the contract was entered into, on the 25th of March, he returned the receipt and I have the receipt here now; this is the receipt I gave to Mr. Leathe and he had it in his possession for a day or two and went with me to Mr. Stoddard's to get the stock and gave it back to me afterwards again, but Mr. Stoddard refused to deliver the stock to him.

Q. You say Mr. Leathe had that receipt?

A. He had it, yes, sir; he had it and returned it to me.

271 Q. Now, the stock in this new company was apportioned as provided in this contract?

A. It was apportioned in the same way, but not under the provisions of the contract.

Q. According to the same amount of shares that the respective parties were to have in the Belleville and St. Louis Railway Company?

A. The capital stock of the Belleville City Railway Company had to be raised to $500,000 and was divided between Mr. Leathe, Mr. Chipley and Mr. Charles W. Thomas——

Q. We are not talking about that matter. Then the stock was distributed by you——

A. It was assigned on the books by Mr. Leathe; I had nothing to do with it.

Q. You had this to do with it that you directed that a certain amount should go to Charles?

A. I did nothing of the kind, sir.

Q. How did Charles get it?

A. He owned all of it.

Q. I know that, but then you got so much less for your share and that was assigned to Charles, and then it was divided as described here. Mr. Leathe got so much, Mr. Chipley, $78,300; Mr. Adams so much and you so much?

A. Yes, sir, and Mr. Needles; he had held two shares in the old company and I saw that he got it in the new.

Q. That was out of your share?

A. Why, no, I tell you there was none of mine in it. We agreed to divide it in a certain way, and that was all there was to it.

Q. Then I understand you to say that there was no other arrangement between the parties except the agreement that was made that day, and appearing on these books?

A. That is not all of it.

Q. Is there any further writing than this?

A. The deed of the Belleville & St. Louis Railway Company.

Q. Do you say, Mr. Thomas, that Mr. Leathe agreed to the correctness of this account?

A. Certainly not; he did not know anything about the correctness of that, but that was the amount we were to receive because we told him that was the amount, and that is what we did it for, that is the reason he took it. He had no knowledge of these things except what we gave him.

Q. Was that not prior to the agreement of March 25th?

A. It was prior to the agreement of January 24th.

Q. I mean the agreement of January 24th.

272 A. And it is mentioned in the agreement as a matter to be paid according to this statement, if you can read the English language.

Q. Now, all sums coming to you, you said, should remain in his hands until matters had been attended to and fully arranged and paid?

A. Arranged and paid, yes, sir, yes sir. That meant the indebtedness on the land that I had purchased before. The railroad company had borrowed money; they were to be paid and charged to me, and until those things were done Mr. Leathe was to arrange these matters, and when they were done they were charged to me, and until that time my money was to remain in his hands, my stock and stuff.

Q. How are those matters now?

A. Mr. Leathe has not arranged these things, and they are being sued on here in court because Mr. Leathe has declined to pay them.

Q. Now, do I understand you to say that he agreed to pay the Belleville & St. Louis Railway Company according to this statement.

A. This statement was referred to as being the indebtedness.

Q. For what consideration was he doing this?

A. For the deed from Belleville & St. Louis Railway Company to him.

Q. He turned that over at once to the other railroad company?

A. Certainly, in payment of his stock.

Q. In payment of his stock which he had already pledged to assign. So he agreed to pay all the debts of the new company, and agreed to take therefor half of the stock?

A. No, sir, I did not say that. I don't know that I ever said that. I said he was to get his money back out of the bonds. The contract said he should take it out of the bonds.

Q. Were the bonds to belong to him?

A. The contract says, not altogether.

Q. Which contract is that?

A. Of March 25th; he examined this thing carefully before he ever entered into it. Mr. Holmes was there acting for him.

Q. Now, I understand you to say that all the contract that was made is the one in writing in this book?

A. Yes, sir.

Q. And by it he agreed to pay all the old debts of the railroad company?

A. He agreed to pay the debts of the Belleville and St. Louis Railway Company at the time of the making of the deed.

273 Mr. KNISPEL: That was on the 25th day of March?

A. That was on the 25th day of March; I think the deed is dated the 25th March.

Q. The deed referred to says a consideration of one dollar and other valuable considerations?

A. That is the deed.

Q. These other considerations were agreed on verbally?

A. Yes, sir.

Q. Well, when you say that this is the only contract, you mean that is the contract which was entered into on the books of this company, and signed by Mr. Leathe?

A. That is, on the books of the Belleville City Railway Company.

Q. And this contract abrogates all former contracts, etc.?

A. Yes, sir.

Q. Well, you say that contract was entered into on the 25th day of March by Mr. Leathe, and this other one on January 24th was not entered into at all?

A. No, sir, it was not entered into at all; on the contrary, he told me he had not signed it.

Q. When the Belleville City Railway charter was accepted in this way that you have spoken of here, that company was to go on and construct the road; that company was to complete the road that was partly constructed?

A. Yes, sir; the Belleville City Railway Company.

Q. The road that was partly constructed by the Belleville and St. Louis Railway?

A. Yes, sir; the whole business went over to them through Mr. Leathe.

Q. Why was it that the deed from the Belleville and St. Louis

Railway Company was not made to the other company, but made to Mr. Leathe?

A. Because Mr. Leathe was told by Mr. Charles W. Thomas that he would have to pay up his stock in good faith; and for that reason the deed was made to Mr. Leathe, so he could pay his stock with it, and he was to pay all the indebtedness of the company for it. That was the statement that was made by Mr. Charles W. Thomas. Mr. Leathe and Mr. Charles W. Thomas seemed to have more to do with each other than any one else after this Belleville City Railway charter was talked of; Mr. Leathe consulted with Mr. Charles W. Thomas a great deal more than he did with me, and went over this ground themselves a number of times in my absence, and once or twice with me. I never knew that Mr. Thomas had made any of these memoranda until lately, when it was handed to me by Mr. Chipley;
274 I did not know he had made any.

Counsel for defendant then gave in evidence the records and minutes of the Belleville & St. Louis Railway Company; the minutes of March 25, 1893; and deed of Belleville & St. Louis Railway Company to Samuel H. Leathe, as follows:

"BELLEVILLE, ILL., *March* 25, 1893.

"At a meeting of the Board of Directors of the Belleville & St. Louis Railway Company the following proceedings were had. Present: Bart S. Adams, John T. Taylor, Alpheus Boling and Henry M. Needles. Meeting called to order by John T. Taylor, Vice President in the absence of John S. Hill, President.

The resignation of John S. Hill as President and Director of said company is presented and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board and Edward L. Thomas was elected to fill said vacancy.

On motion Edward L. Thomas was elected President of said company.

There being no further business the board adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*"

"BELLEVILLE, ILL., *March* 25, 1893.

"At a meeting of the stockholders of the Belleville & St. Louis Railway Company, the following proceedings were had:

Present:

Bart S. Adams,	owner of	.....	62 shares.
John T. Taylor,	"	.....	50 shares.
Henry M. Needles	"	.....	1 share.
Alpheus Boling,	"	.....	1 share.
Edward L. Thomas,	"	.....	876 shares.
Josephine Johnson,	"	(by proxy.)	10 shares.
Total		.....	1,000 shares.
and Edward L. Thomas,	"	.....	3,980 shares new stock.
Henry M. Needles,	"	.....	20 " " "
			5,000 " " "

On motion Bart S. Adams is elected chairman of stockholders' meeting and Henry M. Needles, Secretary.

Edward L. Thomas offered the following resolution:

"Be it resolved, that the president and secretary of this company be authorized and directed to transfer and deed to Samuel H. Leathe all of the property, rights of way, easements and
275 grading of this company, as per deed presented and bearing date this 25th day of March, 1893."

Which resolution was unanimously adopted.

There being no further business before the meeting the meeting therefore adjourned.

BART S. ADAMS, *President.*

HENRY M. NEEDLES, *Secretary.*

"We, the undersigned, stockholders of the Belleville and St. Louis Railway Company, being present, hereby confirm the action of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ill., March 25, 1893.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

"The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, and State of Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land situated in the county of St. Clair, and State of Illinois.

All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

Also all the rights of way, easements, grading and superstructures thereon, acquired by or for the grantor, for the purpose of building a railroad between Belleville & East St. Louis.

And the grantor covenants and agrees to and with the said Leathe that it will, upon demand, convey by a good and proper deed of conveyance to the said Leathe, or his assigns, any lands, easements, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March, 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

[Belleville & St. Louis Railway Co., March 25, 1899.]

Attest: HENRY M. NEEDLES, *Secretary.*

276 We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*"

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who, being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to said instrument for the uses and purposes therein set forth, as president of said company; that he is president of said company, and executed said deed as president, by order of the stockholders of said company whose names are subscribed thereto; also that the said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of said stockholders.

In witness whereof I have hereunto set my hand and notarial seal, this 25th day of March, A. D. 1893.

A. F. MILLER,
[NOTARIAL SEAL.] *Notary Public.*

Filed March 25, 1893, at 2:27 o'clock, P. M.

E. L. THOMAS, recalled for the complainant for further cross-examination, testified as follows:

Cross-examination by Mr. KOERNER:

Q. Mr. Thomas, there has been a note shown here purporting to be signed by the Belleville and St. Louis Railway Company, by Henry M. Needles, secretary to Edward L. Thomas, for fifty-three thousand dollars, I believe, will you state to the court for what that was given?

A. That was given for its indebtedness to me, the indebtedness of the Belleville and St. Louis Railway Company to me.

Q. What did the indebtedness consist of?

(Objected to.)

Mr. KNISPEL: We have a stipulation in a law case being
277 tried that all pleadable defenses should be introduced under the general issue, but here now we have something that goes to the authority for executing the note, I see the drift of this, and that cannot be raised under the general issue.

The COURT: I will hear the evidence for what it is worth.

Mr. KOERNER: What did this indebtedness consist of?

A. It consisted in moneys expended, and liabilities incurred.

Q. How much is for liabilities incurred by you, and how much is for moneys expended?

A. The liabilities that were incurred by me were three thousand dollars as stated in the letter to Mr. Leathe, that was due by the railroad company; I used the money in the building, and is included in this note to be paid by me. I paid part of one note, and the others are not yet paid; that is the three thousand dollars mentioned in that letter. There is a liability that I am not certain whether it is my own or the Belleville and St. Louis Railway Company, a liability to the New York Bank Note Company; the suit is here now pending on it.

Q. Have you charged it?

A. Yes, sir, of course it would have to be paid. I would have to pay it if I recover on this note of course.

Q. It is included in that?

A. It is included in that statement that I made to Mr. Leathe at the time; these are all assumed by me, these are liabilities.

Q. What is that item you speak of, how much is it?

A. $625 was the amount of it at the time I made the statement, but that was not settled, and they may charge me $745; I am not certain about that, but they had agreed at that time to take $625 when we stopped the work. The amount named in that statement I believe is $625, whatever it is.

Q. That amount is included in that note as part of the note?

A. Yes, sir, that is all included in this fifty-three thousand dollar note, excepting some changes that were made, the changes did not amount to a great deal; the changes that were made, made the amount of the indebtedness about $48,202.30; the changes were made when the settlement was made, less than the amount reported to Mr. Leathe.

Q. When who settled?

A. When the railroad company and I made a settlement, it was $48,202, and average interest on it made it $53,022.23.

Q. That was your claim against the railroad company?

A. Against the railroad company for principal.

Q. And the balance of it was interest?

A. That was interest according to the agreement there.

278 Q. Then I understand you to say the $48,000 included the three thousand dollars which you spoke of just now?

A. Yes, sir, that will have to be paid by me as a matter of course.

Q. To whom is that indebtedness due?

A. It is to Messrs. Gould, Shedd, Ferguson and Kent, but Mr. Leathe took up the Gould note.

Q. Is it an indebtedness of the Belleville and St. Louis Railway Company?

A. Well, it is signed this way; I don't think it is exactly, although it is signed by the Belleville and St. Louis Railway Company, by Edward L. Thomas, General Manager. There never was any author-

ity given, it was done at the time I had a contract with Messrs. Gould & Shedd and Ferguson and Kent; they advanced me a small loan on those notes, and as a matter of course I am responsible for them and will have to pay them in the end; however that is not included in this amount, in this statement. Those three thousand dollars don't appear here at all in any sort of way; I will have to pay those three thousand dollars; they do not appear on the statements and do not appear on the note.

Q. Now state, Mr. Thomas, who did the grading?

A. I had a contract with the company to do the grading, and I got Mr. Boling to go in with me and he entered with me into a contract with the company, he and I were together in the grading, Alpheus Boling.

Q. You and Mr. Boling were together in the grading?

A. He and I did the grading, we did not enter into a contract together with the company; I had the contract with the company, and I employed him on certain terms to go in with me to do the grading; I looked after the financial matters, got the money and paid off the men, and did all that kind of business myself.

Q. Well, how much is due to Mr. Boling for the grading?

A. $15,438.80, $24,997.68 and $770, less the amount paid by Capt. Adams. I have credited that on the whole account, this grading is included in the construction account, and there is some timber that is included in the construction account. The whole amount amounted to $45,995.95, of which Capt. Adams paid $9,423.77, leaving a balance in that account of $36,542.18.

Q. That is for you and Boling?

A. That is on the construction account; not me and Boling; a great deal of this thing is what I did without Boling at all, it does not include him.

Q. Now, this timber, where is that?

279 A. That was on the ground, and is there yet; I had them cut and shaved; they were never hauled out; they were hauled, I believe, by Mr. Lepere, and some of them were engaged to be hauled; but I do not know whether they hauled them, because about that time I was very unwell; and we were then engaged in this negotiation, and did not do anything at the time.

Q. How much did that item amount to?

A. That was something like $63, I believe.

Q. Have you and Mr. Boling, for the use of Mr. Boling, filed any suit to recover for the grading against the Belleville City Railway Company?

A. I do not know anything about that, Mr. Koerner; in fact, I never examined it; I know there is a bill here, but I do not know what it is for; Mr. Boling claims a lien on the road as a sub-contractor; that is what I understand it was; I have never seen it.

Q. That will speak for itself?

A. Certainly.

Q. Well, that amount, whatever is coming to Mr. Boling, is included in this note?

A. Is included in this note; I made arrangement with Mr. Boling

by which I was to pay him a certain sum in settlement; a settlement was made between Mr. Boling and myself by which I was to pay him a certain sum.

Q. When was that settlement made?

A. I am uncertain about that, but I think it was some time last spring; I did not tax myself with the date, but some time last spring, some time.

Q. Can you fix the date?

A. I think, probably, it would be April or May, but I do not recollect that; the reason of that was I wrote it, I think, some time before he agreed to it; there was considerable time before he agreed to it; I wrote it—I do not exactly know when it was.

Q. The agreement is in writing?

A. Yes, sir; it is in writing.

Mr. KNISPEL: What agreement was that?

A. The agreement between Mr. Boling and myself; I believe we both signed it; I am not certain; at any rate, it was a settlement between us as to what amount he shall receive.

Mr. KOERNER: Then, I understand you, the whole grading account amounted to $36,542?

A. That is the construction account; the construction account amounted to $36,542.18.

Q. Of which six thousand dollars, you say, is coming to Mr. Boling?

A. Well, yes, sir, six thousand. He does not get six thousand dollars; that includes another item or two, and then there (?)
280 some joint debts that we have that are to be paid that is recited in that instrument, of which he is to pay one-half out of that sum.

Q. That was all on railroad construction, was it not?

A. Well, those are our feed bills, and all those things that do not appear here at all; it is in this grading account; it was not in there; it was feed, but it is in there; there are so many yards of work.

Q. Then, not counting this six thousand dollars, there would be $30,542.18 that is also included in this note that is coming to you on this construction account?

A. No, it is all coming to me from the Company.

Q. Mr. Boling has a suit pending?

A. Oh, well; I know that.

Q. If it was coming to you it would not be coming to him, would it?

A. It is coming to him from me; that is where it is coming from.

Q. Then he has no claim on the Railroad Company?

A. I don't think he has. I so told him before he brought his suit, that I did not think he had any claim, but I don't know what that has to do here.

Q. Now, out of this $30,500 and some odd dollars that you say is coming to you for construction, charged to the construction account, how much of that money had you expended?

A. You want to know how much I expended?

Q. Yes, sir; what I want to know is how much you owe to other

people still, and how much you have actually expended yourself in this thing?

A. I have expended $41,882.40 in this railroad enterprise, that is actual money that I have expended without the interest that I have paid on it, and I owe on accounts that are unsettled, including that amount $53,271.10; that is the money that I have got in this enterprise actually.

Q. About that?

A. Well, I say that is just it; that is actually what I have got in the enterprise, without interest.

Q. That includes Boling's account?

A. Certainly it does. That includes what I expended on account of this railroad.

Q. How much did you say you expended for grading and construction account?

A. Well, you know I have not paid all of this; there are many of those accounts that I have not paid, that I am responsible for; there are eleven thousand and some hundreds dollars that I owe yet on account of these notes.

281 Q. How much is that?

A. I have the figures here exactly if you want them; on these outstanding accounts that I owe personally.

Q. But they are all included in that note?

A. Certainly, that note contains the moneys which I expended in this railroad enterprise; it is included, that is not quite all of it; there are a good many things that are not, money which I expended that I did not put in.

Q. Can you give those exact figures?

A. I will give them to you; $11,338.70, that is the amount I owe engineers and all those things, including Mr. Boling's account. Let me see; $53,271.10, less the $11,000, I must have made a mistake, yes, it is $41,932. It will appear in my statement there the railroad company had the benefit of this too; because there had been a claim allowed me by arrangement with Mr. Holmes representing Captain Adams' heirs; and by Captain Adams formerly of six thousand dollars that was to be paid me for services in my settlement with the railroad company, and in my statement to Mr. Leathe I told him I did not want any services; afterwards we had a dispute about it, after the new contract came up and when I settled with the railroad company this is written on the bottom of the settlement: "This does not include anything for services, which I hereby waive in case this account is settled and paid E. L. Thomas."

Mr. KNISPEL: Is that six thousand dollars included in that note?

A. No, sir. There is nothing for services or anything of that kind. This note does not include the actual amount of money which I expended in the enterprise, with interest.

Q. Have you got a separate construction account from the other account I understand you to say that you have and that it was $36,542.18.

A. I stated that was the amount less what Capt. Adams had paid toward it; this was the amount for which I was responsible and had paid, that is both, either paid or am responsible for.

Q. Well, now of this thirty-six thousand dollars, state to the court how much of that you have paid and how much you are responsible for?

A. No, I cannot divide that, Mr. Koerner, because I owe eleven thousand dollars.

Q. I am trying to get at the construction account now?

A. Well, I believe I can tell you in the construction account. $6,958.60; I owe that on that construction account.

Q. Are there any profits in this claim?

282 A. The six thousand dollars to Mr. Boling; that is the six thousand dollars I owe to Mr. Boling more than covers all the profits we made in the grading; as far as that is concerned, I made no profits whatever out of the grading, not a cent.

Q. Well, Mr. Boling has already paid lots of expenses, has not he?

A. He has no expenses, I paid all of those myself, Mr. Koerner. We bought five or six thousand dollars' worth of stock and wasted it, lost it, or wore it out.

(Objected to.)

Q. These six thousand dollars then are profits?

A. They are the profits that Mr. Boling gets out of it, less his share of the partnership debt, and that is not all the profits even to him; but so far as I am concerned I made no profits whatever, not a cent, the fact is I lost money on it, lost interest.

(Counsel for the defendant objected to this testimony for the reason that it made no difference whether Mr. Thomas made a profit or not.)

The COURT: We will pass on that later on.

WITNESS: I did not make any.

Q. Are any of these charges on the right of way, that you have paid out?

A. I paid some of them, very little of them; Capt. Adams paid most of them; I can tell you what I paid.

Q. How much did you include in the note on the right of way that you paid out?

A. $1,275, excepting $250 that I am responsible for and did not pay.

Q. So then you have included in that note for right of way $1,275?

A. $1,275.

Q. Well is that part all paid for, that $1,275?

A. All but $250, that I am personally responsible for, not pending against the railroad company.

Q. So there is $250 on right of way account which is still owing?

A. It is still pending; the parties have sold the property to the railroad company, it is not exactly right of way; it is extra ground, it does not belong to the railroad; it is ground we bought for borrowing purposes from Mr. Beswick and Mr. Schmidt. There is no title to it because we simply took the surface for that purpose for the road at that time, that is all, so that does not appear in the general account

of right of way; it is my personal indebtedness rather on the contract for grading; that is the fact of it.

283 Q. So the ground does not belong to the railroad company?

A. No, sir. We bought the right to take the dirt off of it; we bought the dirt from the ground of Mr. Beswick for which I agreed to pay him a certain sum of money for it and Mr. Schmidt.

Q. Then it belongs to this construction account?

A. Well, it does not really belong to the construction account, it is properly right of way account, but the company did not acquire any title to it.

Q. St. Louis, Alton & Terre Haute Railroad Company, $3,100?

A. That was paid by Capt. Adams.

Q. Who paid James Dunn $500?

A. Capt. Adams.

Q. Who paid Walter and Mary Gowan $200?

A. Capt. Adams.

Q. Who paid Joseph Touchette $350?

A. Capt. Adams.

Q. Who paid Joseph Beswick and wife one thousand dollars?

A. Capt. Adams paid $800, that is the $200 I have been speaking about; I am personally responsible for that.

Q. Wilhelmina Roemig $300?

A. Capt. Adams.

Q. Andrew Touchette $20?

A. I did.

Q. Thomas Burke for Donnelly heirs $200?

A. Capt. Adams.

Q. Alexander Touchette twenty dollars?

A. I did.

Q. McDonald $360?

A. I did.

Q. Schmidt $500?

A. Capt. Adams $450, I think that is it.

Q. Who paid the other?

A. I think it is fifty dollars; that is the fifty dollars I spoke of; I think that is still due, for taking ground from the outside, let me look at that; no, it is $25 due Schmidt.

Q. That is still due Schmidt?

A. Yes, sir. I had settled with him; I agreed with him for $75.00 we agreed for fifty dollars, Capt. Adams paid him $450, and I was to pay $50; I did not do it and he now claims $75; I think that is the way it is.

Q. He claims that against you?

A. Yes, sir. That is not right of way; Capt. Adams paid $400 and in my settlement with the railroad company there was a change made there of $75 instead of $25.

284 Q. In your statement that you speak of you made it $500?

A. Yes, sir. I had agreed with him on the outside for $50 for the outside work.

Q. He still claims $75?

A. He claims $75.

Q. You have included that in the note against the company?
A. Yes, sir.
Q. Mrs. A. Ehrstein $50?
A. I paid that.
Q. William Lepere $20?
A. I paid that.
Q. Uen Atchison $425?
A. I paid that.
Q. George Merod $35?
A. I paid that.
Q. George Scherra $70?
A. I paid that.
Q. Now here is an item of contracts graded, in which you say there is to be paid items amounting to $10,600, that is part of the construction account, is it?
A. No, sir, that is not included in this note at all; I will tell you how this was. In the statement I made Mr. Leathe of the contracts that I had with persons for going through their land that I had not paid, but I had an agreement with them provided we did not take their coal; there were a great many of them, and that had never been changed when he went into this enterprise. Mr. Leathe went along and got nearly all of the coal, and most all of them, in fact I believe all of them of whom he bought the coal granted the right of way and there were three that did not; he did not purchase the coal of them and made subsequent contracts. At the time that statement was made those contracts were made but they were never paid and never——
Q. It is stated here "paid by Thomas & Adams."
A. No, it is not paid by Thomas & Adams and is not included in this.
Q. That is Capt. Adams alone, ain't it?
A. I don't know; that is the way I read it here; whatever it is, it is correct; Capt. Adams paid $8, 150 cash.
Q. Is that included in this note?
A. No, that is included in the Adams portion.
Q. There was a division made?
A. This claim is—this was a statement made to Mr. Leathe to show the entire amount of money that went into this enterprise.
285 Mr. KNISPEL: Was it included in that note?
A. Not a particle of it; Capt. Adams' estate got a note for it, got it at the time I got mine; he got his to show his indebtedness, and I got mine to show my indebtedness; it has been standing for some time, and the company settled with him at the same time it settled with me.
Q. Now, here is 160 acres of coal, at $60?
A. Certainly.
Q. Did the railroad company buy that?
A. No, no; that was since bought by Mr. Leathe; we had agreed to buy that at $60 an acre, the coal, and Capt. Adams had paid $2400 cash on that; that was included in his account, and I had given my note and mortgage for $7,200.

Q. That is charged to the railroad company?

A. Against the railroad company, that is to say, the shaft and the entry, that is charged——

Q. Against the railroad company?

A. Certainly; that was done for the purpose of carrying on the enterprise; it was to try the coal, to see whether the coal was there, for the purpose of trying it.

Q. How much of that coal account do you charge to the railroad company in your note?

A. Very little; the difference between $1,275 and $1,730; I have not figured it out, it is about $425.30, there were some small items.

Q. Mr. Thomas, in this coal purchased by the Crown Coal Company——

A. No, it was purchased by myself first and Captain Adams and paid the cash payments.

Q. Who did you deed it to?

A. I deeded it to Mr. Leathe and he deeded it to the Crown Coal Company.

Q. Does this not charge it to the coal account instead of the coal company?

A. No, this is not charged for coal; this is charged for testing; the charge here is made for testing; for a trial shaft in order to float the railroad enterprise, not the coal enterprise.

Q. Is that charged in this note?

A. Why, no, that is not charged; all that is charged in the note is $425, that is all.

Mr. KNISPEL: Just explain to the court, how you get that item—the item of $425?

A. I get that for labor, material, hauling and so forth, for the sinking trial shaft, for the purpose of seeing the coal, all for
286 the purpose of floating the railroad enterprise, to do that it was necessary to have a trial shaft.

Q. It was moneys expended for that purpose?

A. It was money expended for that purpose.

Q. Was that paid?

A. That was paid.

Q. I see here in the account an item in 1899, "expenses to St. Louis, $172"?

A. Yes, sir.

Q. Whose expense was that?

A. My own.

Q. Your expenses for going to St. Louis?

A. For the purpose of floating this enterprise, getting somebody interested in it. During 1889, I went a hundred times, probably to St. Louis; I do not think I charged half the expenses.

Q. Then "assistance $250," what do you mean by that?

A. A gentleman assisted me, and I owe him $250 for that.

Q. You owe him $250?

A. Certainly, I think that is the amount of it; you do not get things for nothing when you get people to help you; the attorney at law business I thought I was able to attend to myself.

Q. That was assistance in going to St. Louis, and getting——
A. No, no, assistance in getting men interested in this enterprise.
Q. Some promoters?
A. Promoter, yes, sir. I took people out over the route and went around with them, and going out over the route myself; I was in St. Louis, probably a hundred times in 1889, to get people to take hold of the enterprise; trying to get somebody interested in it. I was engaged in that for one year and six months before Capt. Adams went in with me.
Q. In 1890, expenses to St. Louis, and East St. Louis, $262?
A. Yes, sir, I was in St. Louis, and East St. Louis, numbers and numbers of times.
Q. Chicago, $75?
A. Yes, sir, two or three times, and to Springfield two or three times.
Q. Trip to New York, Needles and self, $306?
A. That is the time we had the bonds signed.
Q. Then there is horse, buggy and harness, $245?
A. I purchased in the summer of 1890, a horse, buggy and harness, and used it up entirely.
Q. For the railroad company?
287 A. Yes, sir, I used it up entirely, and another horse besides that Mr. Boling had——
Q. Then board of horse $84?
A. Yes, sir. I had paid $15 a month there for some time; I think from June until the end of the year. After I got the horse and buggy we filled in the time then surveying.
Q. I see here in 1891 "securing ordinances" $135; where were they secured?
A. Here in Belleville.
Q. Ordinances for what?
A. For a road down Fourth South street and up Illinois street up to the public square; it was an expense that had to be paid. I had to pay to gentlemen for getting up petitions, etc. I owe Mr. John Bux $25 on that account.
Q. That is all included in there?
A. Yes, sir, that is my individual debt.
Q. Trip to Chicago, $74?
A. Yes, sir, we were there twice, I think.
Q. Churchill contract?
A. That was in 1891; Capt. Adams had died in March, 1891, then we began from September, 1890, to September, 1891.
Q. Did you pay the $1,500 on the Churchill contract?
A. I did not.
Q. Well, have you got the railroad company charged with that?
A. I have.
Q. Is it included in this note?
A. It is——
Q. You have not paid it?
A. I have not.

Q. Sullivan and Townsend contract $1,000?

A. That is not paid and is still due them, and is included in these $11,000 that I have given the court.

Q. What contract was that Sullivan-Townsend contract?

A. It was to engage assistance and pay them their expenses and should they succeed in securing a man—Mr. Townsend was a very active man——

Q. All promoters?

A. Those two, yes, sir.

Q. You owe them $1,000?

A. I do.

Q. Do you charge that to the railroad company?

A. I do.

Q. Was Churchill?

A. The same.

288 Q. Also promoters?

A. Yes, sir.

Q. Options on coal $250?

A. That was expenses in getting options on coal; three or four times I was sick and I got Mr. Reiss and Mr. McConaughy and they had horses and buggies, I believe, and money, and so forth, paid out. There were three or four times I got those options so that we could get the coal if we should want it, and I believe when Mr. Leathe went in they had expired then.

Q. Was that not under the coal company contract?

A. No, that is not properly chargeable to the coal company. That is in the railroad enterprise, because it was necessary to have these to enlist anybody in the railroad enterprise; that was the reason of it.

Q. That $250, has that all been paid, or is a portion of it still due?

A. Well, I really have paid all of it, as far as that is concerned, except what I owe Mr. Reiss; I have not paid him.

Q. You charged that to the railroad company, did you?

A. Certainly.

Q. Rights of way $150?

A. That is rights of way.

Q. Knispel fees $250?

A. There is $500 there, yes, sir.

Q. $250 there is here?

A. Well, since that time Mr. Knispel and I have had a settlement, and he insists on having $500.

Q. Have you charged $500 to this company?

A. Yes, sir, it is my individual indebtedness to Mr. Knispel; the railroad don't owe anything.

Mr. KNISPEL: That was the condemnation suit on other railroad business; I was attorney in the Cairo short line and several others.

A. We settled the case afterwards and lots of other things.

Mr. KOERNER: The question is whether the work was done for the Railroad Company or Mr. Thomas?

A. It was for the Railroad Company, and Mr. Knispel asked me for that money.

Q. The question is whether it was done for the railroad?

A. It was done for the Railroad Company; there were several matters. He gave me written opinions on different questions that I wanted in this matter.

Q. "St. Louis $190," was that expenses?

A. Those are expenses for the year 1891.

289 Q. Board of horse $175, and livery $21.50?

A. That is East St. Louis livery.

Q. 1892, St. Louis, $250?

A. Yes, sir, I went to St. Louis all the time in 1892, nearly.

Q. That is all charged in the note, I understand?

A. All in the note.

Q. East St. Louis, $100?

A. Yes, sir; I was over there for weeks trying to get an ordinance.

Q. Stenographer, $122?

A. I think it was a little bit more than that, but I got Mr. Krebs' bill after I put in this account and I found I was short there about $50 or $60 on that account; it stood about $180.

Q. You owe Mr. Krebs——

A. I owe him about $100, about, or not quite that much; there are some other little things in the bill.

Q. Petition, $200?

A. Yes, sir, that is a petition for the track on Main street; we had gotten up one petition and had to get up another to come along Main street.

Q. Do you mean drawing the petition?

A. No, not getting it up; you know the expense of going around, paying men to do it and all that, going myself some and spending money.

Q. You owe that?

A. Not all of it.

Q. How much?

A. I cannot say that; I owe Mr. McConaughy some, Mr. McConaughy owes me on other things, and I do not know exactly how it is; when we come to settle up I will know how.

Q. Was that done for the Railroad Company?

A. It was.

Q. Ordinance City of Belleville, $400?

A. Yes, sir; we were at that a good while and had a good deal of assistance; we had a good deal of a fight.

Q. That $450, was that for expenses in getting the ordinance?

A. Not altogether; I will say, however, none of it was given anybody for a vote in the council; not a cent went to the council.

Q. Well, was that paid, or is it owing?

A. Well, part of it is paid, but I owe two gentlemen for that yet some.

290 Q. Did you employ Mr. McConaughy to do any work on behalf of the Railroad Company?

A. Yes, sir.

Q. Has he any claims against the company?
A. No, sir; against me.
Q. That is the understanding?
A. Yes, sir. He has no claim at all against the company; none of these gentlemen, I think; the understanding is that they would look to me for their pay.

Re-examination.

Re-examination by Mr. KNISPEL:

Q. Mr. Thomas, you stated, or the gentlemen had you read from this statement, that the whole amount of the indebtedness was fifty thousand and some odd dollars, without interest; was that submitted to Mr. Leathe before he went into this enterprise?
A. Oh, yes.
Q. What was the reason that you submitted that to Mr. Leathe at that time?
A. To show him the amount of the indebtedness, so that he would know exactly what they were.
Q. What, if anything, did Mr. Leathe say about assuming such liabilities?
A. Nothing was said, only he entered into the enterprise on March 25th and assumed all the liabilities for a transfer of the property to him.
Q. At the time this deed, which I believe was introduced in evidence week before last, showing a transfer to Mr. Leathe in consideration of one dollar and other considerations—the other consideration is the indebtedness of the Belleville & St. Louis Ry. Co., was that part of it?
A. That was it.
Q. And upon this consideration Mr. Leathe received that deed?
A. He did.
Q. I believe that deed was introduced?
A. That deed was introduced, yes, sir.

Mr. KOERNER: They are all part of the record here.

Mr. KNISPEL: At the time this note was executed, upon what authority was it executed?
A. It was executed upon the authority of the Board of Directors of the Belleville & St. Louis Railway.,
Q. Was the Board of Directors present?
A. Yes, sir.
291 Q. Were the items gone over?
A. Yes, sir, they were discussed; Mr. Adams and I did not vote on the question at all, being interested; the other directors were Mr. Needles, Mr. Taylor and Mr. Boling.
Q. Is that contained in this book—that proceeding?
A. It is; it was August 21st, I believe.
The COURT: Mr. Thomas, did this railroad enterprise, did it contemplate building a railroad for general purposes, or only for the transportation of coal?

A. The first intention was for the transporting coal only, after that, after Capt. Adams went in, it was suggested to make arrangement to come to Belleville to go right on; the first intention simply was to build a coal road, a coal line, out into the coal land.

Q. What was the main purpose, the main object of the enterprise?

A. The transportation of coal, owning our own coal and our own railroad, that was the idea.

Mr. KNISPEL: That was the first idea?

A. That is the idea yet, as far as that is concerned, but afterwards we had another idea.

Q. You got a right of way through the city?

A. That was through the contract I had with Mr. Gould and those parties.

Q. Before Mr. Leathe participated you had some grading done in the city of Belleville?

A. Yes, sir.

Q. And you secured an option for depot ground?

A. Yes, sir.

Mr. KOERNER: Is there an ordinance in force now allowing you to come into the city?

A. It has expired; there was a copyright there, or two of them.

Mr. KNISPEL: I believe it was testified to by you and Mr. Charles W. Thomas at the last hearing, that Mr. Leathe insisted upon substituting the Belleville City Railway charter for this?

A. Yes, sir.

Q. And thereupon the transfer from this Company was made to him and by him — it was to be made to the Belleville City Railway?

A. By him; yes, sir.

Q. And that was the general charter giving the full right to cross every street in the city, and I believe East St. Louis, too?

A. That was the idea, but as I said before, that was against my advice. Still I was so situated that I could not help myself.

Defendant then gave in evidence the resolution of the
292 Board of Directors, stating the accounts with Mr. Thomas and authorizing the Secretary to execute the note.

"BELLEVILLE, ILL., *August* 21*st*, 1893.

OFFICE OF BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

At a meeting of the Board of Directors of the Belleville & St. Louis Railway, held at the office of the Company, August 21, 1893, at 2 o'clock p. m., the following proceedings were had:

Present: All of the Directors.

Henry M. Needles, Secretary of the Company, reported to the Board that during the Presidency of John S. Hill, no action was taken under a resolution of this Board, adopted September 10, 1891, respecting the settlement of affairs between this Company, Edward L. Thomas and the heirs of W. A. Adams, and that since said Hill ceased to be President of the Company the said Secretary had stated accounts between Edward L. Thomas and this Company, and be-

tween Ellen S. Adams and Bart S. Adams, heirs of W. A. Adams, deceased, and this Company reports to the Board that there is due from this Company to said Ellen S. Adams and Bart S. Adams the sum of $27,462.65; that the said indebtedness is composed of the following items:

Money advanced to this Company by W. A. Adams in his lifetime, between the 1st day of September, 1890, and the 1st day of April, 1891, for the purpose of constructing the Company's railway, $23,674.72; interest upon same at the rate of six per cent. per annum, taking the average time during which the said money was advanced, and up to the 21st day of August, 1893, being in round numbers and omitting odd days (the interest for which was waived) the sum of $3,787.93. Total amount due being upon this day the sum of $27,462.65, and he further reports that upon stating an account between this road and Edward L. Thomas, he found to be due to said Thomas the sum of $53,022.23, which is composed of the items contained in the itemized account herewith, submitted to the Board and made a part of this report. Mr. Taylor moved that the report of the Secretary be accepted and approved, and that the Secretary of the Company be directed to execute and deliver to Ellen Adams and Bart S. Adams the promissory note of the Company for the said sum of $27,462.65, due one day after date, bearing interest at the rate of six per cent. from maturity until paid, and that the Secretary be further directed to execute and deliver to Edward L. Thomas the promissory note of the Company for the said sum of $53,022.23 due one day after date, and bearing interest at the rate of six per cent. from maturity.

293 Mr. Boling seconded the motion, and Edward L. Thomas and Bart S. Adams refusing to vote, the motion was adopted by vote of all the other directors.

The board thereupon adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

Mr. THOMAS: I will say again, as I said the other day, that I would never have changed this original statement if I had known it to have been executed by Mr. Leathe, if he had not told me he would not execute it, if he had executed it I should have held him to that by all means.

Q. You mean that of January 24th?

A. Yes, sir; January 24th.

Mr. KOERNER: He is willing now to stand by that?

A. If I could do it; I cannot stand by it; it is changed. If I could be replaced where I was with that contract in force I would be very willing to do it, but I cannot do it. It is impossible.

Mr. KNISPEL: That contract, I believe you testified, was entered into March 25th, and he signed the other one some time in August?

A. I did not testify to that, Mr. Chipley testified to that. I testified that he refused to sign it and told me he had not signed it all the time.

Q. These items put in the note had been carefully passed over and everything included therein that you had either paid or were responsible for?

A. All these different items that are still due, for instance Mr. Boling, Mr. Reiss to myself and to others, are personal liabilities of mine, and they have no claim against the company; they do not claim anything of the company and never have, they always have looked to me.

Defendant then gave in evidence the note issued by the Belleville and St. Louis Railway Company, as follows:

$53,022.23 BELLEVILLE, ILL., *Aug.* 21, 1893.

One day after date the Belleville and St. Louis Railway Company promise to pay Edward L. Thomas or order, the sum of fifty-three thousand and twenty-two and 23/100 dollars with interest thereon at the rate of six per cent. per annum until paid.

THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

Defendant rests.

And thereupon the complainant introduced the following in rebuttal, that is to say.

294 J. M. HOLMES, sworn for the complainants, testifies as follows:

Direct examination by Mr. KOERNER:

Q. What is your name?
A. J. M. Holmes.
Q. Where do you reside?
A. St. Louis, Mo.
Q. What is your occupation?
A. Lawyer.
Q. Are you acquainted with Mr. Edward L. Thomas?
A. Yes, sir.
Q. Do you know Mr. Charles W. Thomas also?
A. Yes, sir.
Q. Were you acquainted with Capt. Adams in his life time?
A. A great many years.
Q. Were you employed by Capt. Adams at any time?
A. Yes sir. I have been his attorney I think for 15 or 16 years prior to his death.
Q. Were you acquainted with the enterprise at that time called the Belleville & St. Louis Ry. Co. and the Crown Coal Co.?
A. Well, I was acquainted with it in a slight way. I never knew very much about it, except that I knew that Captain Adams had an arangement over here—I knew in the first place that he had a coal company over here called the Crown Coal Company in which Mr. Thomas, Mr. Taylor and himself were interested, and

which was rather a small concern, and I knew also that he was engaged with Mr. Thomas in building a railroad as I supposed for coal purposes, that he always talked to me about, and I was trying to dissuade Captain Adams from going into that; I think Mr. Thomas will testify to that.

Mr. THOMAS: But I was a better persuader?

A. You was a better persuader than I was.

Q. Well after a while Captain Adams died?

A. He died in the spring of 1891, I think.

Q. Did you become better acquainted with this enterprise after that?

A. I examined into it a little bit more and had a talk with Mr. Thomas and informed him that the design of the Adams estate was, of the administrator was, to cease putting in any further, and was to get out what they had in there, was to turn their position from that of builders of railroad into simply creditors of railroads as far as it had gone; I will say that Capt. Adams left as sole heirs his wife and one son, who at that time was about twenty-three years old, I think.

295 Q. That is Bartlet S. Adams?

A. Bartlet S. Adams; and I say from that time on I knew very little about the road; Mr. Thomas was making a great number of efforts to interest other people in it; bonds had been issued, I believe, and he had a considerable amount of them as security of the indebtedness which was due the Adams estate. That indebtedness was close to the neighborhood of twenty-five thousand dollars, with interest, amounted to about twenty-seven thousand dollars, and they held a number of bonds as collateral security for that; I know Mr. Thomas tried to make a deal with other persons and get them to take hold of the matter. I don't know that I was particularly informed as to what was going on between the time of Captain Adams' death and some time along in December, or fall last past.

Q. Are you acquainted with Mr. Samuel H. Leathe?

A. No, sir; not at that time.

Q. Are you now?

A. Yes, sir.

Q. Well then, your object was to collect this money for the Adams estate?

A. Yes, sir, solely; and to get them out of the railroad.

Q. You became aware of the negotiations which were carried on with Mr. Leathe?

A. Yes, sir.

Q. Did you learn of the contract that was made?

A. Yes, sir.

Q. That has been introduced here of January 24th?

A. Yes, sir.

Q. I will ask you whether you were present at the meeting of March 25th, 1893, of the Belleville and St. Louis Railway Company?

A. Yes, sir.

Q. What do you know about the Belleville City R'y Company?

A. Well, I know this: I knew what the contract was; of course,

I knew in the first place, it was the idea to get some one to go in there and complete the road and to give the person a lien for the money which they should put in, ahead of other persons; Mr. Thomas told me repeatedly that was the basis of the contract, and no one would go in and buy there subject to a lien for the money that had gone in before. I knew that a contract had been made by virtue of which Mr. Leathe was to advance the money necessary for completing that road; that the road was then to be built and bonded for the sum of five hundred thousand dollars, out of the proceeds of the bonds, after payment back to Mr. Leathe of the expenses incurred by the completion of the road, then the remainder of the amount was to be paid to Mr. Thomas and Mr. Adams,
296 and no one else. Such was my understanding of the contract that was made.

Q. Then what occurred afterwards?

A. Then this meeting was called for March, prior to March 25th, and I met Mr. Chipley; his position in the matter I never did clearly understand, that is, he was paid, as I understood, a commission by Mr. Thomas, although he was acting then for Mr. Leathe.

I never did understand his position in the matter, I understood that they were to arrange to get hold of the Belleville City Railway charter, Mr. Adams told me that and Mr. Chipley seemed to have an interest in it, and Mr. Leathe asked me to come over to Belleville here to the office of Mr. Charles W. Thomas, where the great charter reposed and to examine it and see if the proceedings under it had been regular.

Mr. KNISPEL: You were then the attorney for Mr. Leathe?

A. No, sir; not at all.

Q. Did you comply with the request of Mr. Leathe?

A. I came over with Mr. Leathe and examined this contract in which I was interested, and Mr. Leathe asked me—Mr. Thomas had asked me—I came equally as far as that is concerned—I only state the fact that he was the person who asked me to come over. I went over and examined and reported to him that I did not think there was anything in it that we wanted.

Q. You were representing the Adams estate?

A. I was representing the Adams estate, and as far as that is concerned, I was representing anybody else that was interested in the enterprise. I was the attorney for the Adams estate who were interested in the enterprise, one of whom was Mr. Leathe, and he requested me to come and make the examination, which I did, and knowing that he was the man who put in the money, I supposed, as a matter of course, he wanted to know what the charter was, and I reported to him, I reported to him about the charter, and I don't think I ever heard him say anything further about it. I heard no more about it until a little while before the 25th of March, I was told by one of the parties, I don't know who, I think, Mr. Adams, that they had concluded to take in the Belleville City Railway charter, and that Mr. Ed. Thomas was to pay for it, that was the information given me.

Mr. THOMAS: Did he tell you I objected to it, too?

A. I cannot recall whether he did or not, but I think, as a matter of fact, that you did, I think we agreed on the matter of this charter.

Mr. THOMAS: I objected all the time.

297 WITNESS: Then I was informed by Mr. Adams also that a meeting was to be held on the 25th of March, I think, the record will show that, that was for the purpose of taking in this charter. I went over there, and the day before I went over, I am inclined to think, or the morning that I went, while I was waiting for the train at East St. Louis, Mr. Leathe spoke to me and asked me if I would also at that meeting represent his interests. After that time I never had a consultation with Mr. Leathe that I am aware of, and my acquaintance with him was extremely slight, in point of fact I did not know what he referred to. I went over there in Mr. Adams' interest to see that nothing prejudicial to the interest of the Adamses should take place there. Now, the method by which the Belleville City Railway charter was to be taken in was this:

(Objected to.)

Q. What was done to the Belleville City Railway charter?

A. The capital stock was increased from——

(Objected to.)

Mr. THOMAS: That is all a matter of record, everything that was done here on these books.

Mr. KOERNER: Mr. Holmes, was there anything said outside of that in relation to a change of the existing contracts between the parties?

A. Not a word.

(Objected to.)

Q. Everything that was done was put on the books there?

A. Yes, sir.

(Defendant objects to any further testimony in regard to what transpired at that meting.)

Q. You heard Mr. Thomas' statement in regard to that; now state the facts.

A. Well, I can only say, if there was any agreement there on the part of Mr. Leathe to pay the debts of the Belleville & St. Louis Ry. I never heard it; I can not state further than that. Had he made such a contract my interest in the railroad would have terminated; I would have entered suit against him at the June term for the amount of the Adams debt, because I would very much rather take his agreement, as he had large real estate interests in St. Louis.

Q. Your business was to look after the interests of Captain Adams?

A. Wholly so.

Q. That was twenty-seven thousand dollars that this company owes Captain Adams' estate?

A. Yes, sir; I would have no object in holding the parties to that contract.

298 Q. Now, while you were present at that meeting representing Captain Adams' estate, you heard no promise of payment of those debts by Mr. Leathe?

A. Most assuredly I did not, that promise would have been very promptly acted upon.

Q. When did you first learn that there was any such promise as that supposed to have been made?

A. When Mr. Thomas stated it in the court room here; I never heard it before, well, not when he stated it in the court room. I think he set it up in his petition in this case or arguing the petition. That is the first time when the arguments had been made.

Q. Have you since that time continued in the employment of the Adams estate?

A. Yes, sir, right straight along. I done a great deal of business for them.

Q. Do you remember any conversation held the latter part of September or in October, in which Mr. Thomas was connected?

A. I do not remember the details.

Q. It was in regard to this contract of January 24th, was it not?

A. Yes, sir, I had a conversation with Mr. Thomas in my office; I cannot locate the date exactly. If I could get the day Mr. Chipley was removed as president I could give it exactly.

Mr. THOMAS: That was looking to a compromise and you know that you have no business to say anything about that.

A. No, I am not going to speak about a compromise, in that conversation you remember, at that meeting I told you that Mr. Chipley had come to me and wanted to have the stock in the Crown Coal and Tow Company issued; we wanted his stock issued to him at once, and that I had responded to him that he had no right to have that stock, that it might get into the hands of innocent holders, that it should be held for the protection of the parties who had contributed their capital there, and that as soon as the original parties had been protected and the matter had been settled that bonds ought to be issued for the amount that the different parties had put in and secured by mortgage on the road before the stock was issued. Thereupon I told you that Mr. Chipley was claiming under the terms of the contract of January 24th, that he was entitled to it without security. Because it contained the terms that he should have the same proportion in any other company, and entitling him to have his two-fifths issued to him regardless of a question of security, and I thereupon requested you——

Mr. THOMAS: That was in the way of a compromise.

299 A. I didn't so understand it, but if you so understood it I will say nothing further.

Mr. THOMAS: It was so stated to me before I wanted to talk to you.

A. Let me call your attention, Mr. Thomas, it is true that you came over to talk compromise, and true that we discussed that at some length, but this had no connection with it, I was relating to you Mr. Chipley's position in the matter and that was all there was to it.

Q. Mr. Chipley was insisting upon this contract as late as September or October?

A. Yes, sir, about the last of October I think; he was insisting upon it that time.

(Defendant objects to this testimony.)

WITNESS: I would say there was no question made at that time about the company operating under some other contract than that of January 24th.

Mr. THOMAS: Did I not tell you that Mr. Leathe refused to enter into the contract of January 24th?

A. I do not think you told me that until very shortly thereafter.

Q. All that time, too, before?

A. No, not that I recollect.

Q. You have been appearing in this case as counsel?

A. Yes, sir.

Q. For the railroad company?

A. Yes, sir, I have been their general attorney I may say since the 1st of May, 1893.

Q. The Belleville City Ry. Co.?

A. Yes, sir.

Cross-examination.

Cross-examin*ated* by Mr. THOMAS:

Q. Mr. Holmes, you came over that morning when Mr. Leathe met you at East St. Louis and asked you to look after his interests also?

A. Yes, sir.

Q. He employed you to do so as his attorney?

A. No, I do not know as I was his attorney.

Q. Were you not an attorney?

A. Yes, sir, for the Adams heirs.

Q. And didn't he ask you also to look after his interests?

A. That is all that was said about it one way or the other, I believe.

300 Q. Now, Mr. Holmes, you say that you had a conversation with me at your office over there?

A. Yes, sir.

Q. Did I not say, Mr. Holmes, directly to you, did I not write you a letter in which I said I would come over to talk compromise of this matter?

A. Yes, sir.

Q. Did I not in pursuance to that letter come over and talk compromise and wasn't that whole matter regarded there as a compromise?

A. No, sir.

Q. You acting for Mr. Leathe?

A. No, that is not correct.

Q. Didn't you tell me you were employed by him before this?

A. No, I did not, I never was his individual attorney in my life, and am not now.

Q. You are employed by the Belleville City Railway Co.?

A. Yes, sir.

Q. Are you appearing for him in this matter—were you acting for him in compromising this matter?

A. No further than I was acting for the Adamses.

Q. When were you employed by the Belleville City Railway Company?
A. The 1st day of May, 1893, the contract was dated that day.
Q. Who employed you?
A. I think Mr. Chipley.
Q. For the Ry. Co.?
A. Yes, sir.
Q. Did Mr. Chipley make the contract for both companies?
A. Yes, sir, the Coal Company and the Railroad Company.
Q. Who was present at the meeting March 25th?
A. Well, you were there, Mr. Charley Thomas was there, Mr. Needles was there, Mr. Bart Adams was there, Mr. John Taylor was there, Mr. Samuel Leathe and Samuel H. Leathe both were there, and then there were one or two whom I did not know.
Q. When this contract was made you say it was read aloud?
A. Which contract do you refer to?
Q. Of March 25th?
A. I do not recall that sir.
Q. When that thing was done?
A. When that resolution was written, yes, sir, it was read
301 aloud.
Q. The resolution of March 25th was read aloud?
A. Yes, sir.
Q. And you examined it?
A. I don't think I examined it; I listened to it.
Q. Did you take it afterwards, did Mr. Leathe take it and hand it to you and ask you to read it?
A. I don't think he did; I either read it or heard it read, I am not quite sure about that.
Q. Did you consult and discuss with Charley Thomas about it?
A. Not that I am aware of.
Q. Did you not suggest an alteration in it before it was entered in the book?
A. Not that I am aware of.
Q. Do you say you did not?
A. I say I do not recollect.
Q. How does it come that you do not recollect those things, and recollect others?
A. Because it is a mere matter of indifference whether I did or not as far as that is concerned.
I will say, Mr. Thomas, that I was perfectly aware of the contents.
Q. You were asked in East St. Louis by Mr. Leathe to represent him in that meeting?
A. Yes, sir.
Q. And you agreed to do so?
A. Yes, sir, to that extent; I say I never had any consultation with him at all.
Q. He asked you to represent him, and you agreed to do it?
A. Yes, sir.
Q. Don't you remember a change that was made in the resolution; it was read first and changed; it read first, Walnut street, in this town, and was changed to the original city?

A. I could not say that I remember it; I never knew Walnut street or the original city, and certainly it could not have been changed on my suggestion.

Q. Don't you remember that change was made?

A. No, sir, I do not; my impression would be it was in the original draft as written, but I could not say that positively.

302 SAMUEL H. LEATHE, one of the complainants, being first duly sworn, testified as follows:

Direct examination by Mr. KOERNER:

Q. What is your name?

A. Samuel H. Leathe.

Q. Where do you reside?

A. St. Louis, Missouri.

Q. You are one of the complainants in this suit?

A. Yes, sir.

Q. In what capacity are you connected with the Belleville City Railway Company?

A. I am president of the Board of Directors, president and treasurer at present.

Q. State if you are acquainted with Edward L. Thomas.

A. I am.

Q. When did you first become acquainted with him?

A. In January last.

Q. Do you remember entering into a contract with him on January 24th. The one shown in evidence here?

A. I do.

Q. I will ask you, Mr. Leathe, when this first contract was made, immediately after January 24, 1893, whether you did anything under that contract?

A. I did.

(Objected to.)

Q. State what you did under that contract, Mr. Leathe?

A. I purchased property in pursuance of that agreement.

Q. How soon did you begin to purchase the property?

A. Well, I purchased one piece prior to entering into the contract, in anticipation of it, with the understanding——

(Objected to.)

Q. Now, Mr. Leathe, have you an account of the money expended about that matter?

A. Yes, sir.

Q. Well, referring to this, is this a correct statement of your expenditures?

A. That is a correct statement of what it purports to be.

Q. You may refer to it to refresh your memory?

(Objected to.)

Q. Now in regard to this railroad land?

303 A. The first purchase that was on the 27th, the first money paid was $500 earnest money in purchase of a lot on the river front East St. Louis, known as the Snyder lot, that was

January 27, 1893, the earnest money was paid on that day and the deed was given some days later.

Q. Were there other expenses incurred between that day and March 25th?

A. Yes, sir, between the 4th and 21st of February I paid Major Stephens $27.10 as engineer services; on the 18th of February I paid Mrs. Snyder $2,000, completing the first payment on that lot; recording deed and notary fee $1.25; on the 23d I paid $150; on the 24th Edward L. Thomas I paid the First National Bank $750; March 1, Louis Graner, surveying lot 233, $16.20. That was to establish the boundary, and it was thought he knew better than our engineer; March 2, Frank Johnson, $1,500; March 5, A. C. Hucke, wire fencing for lot 233, $——; on the 8th, C. F. Stephens, engineers, laborers, $22.50; W. A. Reiss, $19.

Q. What was Reiss and Stephens doing and these people that you paid this money to?

A. They were assisting to survey the line.

Q. That was construction work?

A. Construction, yes, sir.

Q. Those sums of $1,500 and $750 you paid them in pursuance of this contract of Jan. 24th?

A. I did.

Q. Now, I will ask you, Mr. Leathe, did you between any of those dates pay out anything for the Crown Coal and Tow Company or the Crown Coal Company, that is, prior to March 25, 1893?

A. I purchased a Tug for $6,000 on the 17th of January; on February 27th we purchased some coal property of Joseph Ehrstein and we paid $4,000 for the purchase of the coal lands and of Peter Schwinn on the same day $500; March 1, Mary Voellinger, $4,300. The cash payment or the respective items up to March 1, were $6,043 that was up to the time of settlement. That tug was purchased in this way, $637.50 cash and $1,912.50 in different payments, there was a total of $22,100 that was purchased for the Crown Coal and Tow Company. There was an item for E. L. Thomas, bills receivable $1,050 cash, that was for his interest as I understood it and $7,200 preferred payments.

Q. Well now, in order to make this thing short without going over it in detail, you may state how much you have up to this time expended in cash for the account of the Crown Coal and Tow Company?

A. About $69,000; I should say $109,000.

304 Q. Is that in money?

A. $64,084.85 *cents* in money and $45,680.50 in deferred payments.

Q. Did you give notes for the deferred payments?

A. Yes, sir.

Q. Did you give your notes?

A. Yes, sir.

Q. They are still outstanding, are they?

A. Yes, sir.

Q. And $64,084.86 you have paid in cash?

A. Yes, sir.

Q. Do you mean to say that you have paid that, Mr. Leathe, or that the company, or how?

A. I paid it individually.

Q. How much have you paid for the account of the railroad company?

A. I have paid $51,744.40 cash payments.

Q. And deferred payments?

A. $17,124 deferred payments, and contracts entered into not paid $26,828.40.

Q. What is the last item?

A. Contract for grading.

Q. Which still have to be paid?

A. Yes, sir.

Q. These have all been made since you have taken charge of the railroad?

A. Yes, sir.

Q. Can you tell from your memorandum there how much of these moneys were on account of the railroad, and how much on the part of the Crown Coal Company, you paid prior to March 25th?

A. I can by figuring it up; $5,059.36 in money.

Q. On the railroad?

A. On the railroad, yes, sir, prior to March 25th.

Q. And in the coal company how much?

A. Well, I have included in this that payment of $770 for grading. That was during March, which I paid afterwards on March 30th.

Q. Well, that was for work done during the month of March, was it not?

A. That was for work done during the month of March, yes; at least it was done prior to the date of payment. I do not know just what date the work was done, but it was done subsequent, as I understand it.

Q. Who did you pay that to?

A. I paid that to Edward L. Thomas.

305 Q. How much was paid out for the coal company prior to March 25th?

A. $7,500; that was, $41867.90 cash prior to March 25th on the coal account, and $45,680 in obligations.

Q. It is provided in the contract of January 24th: "Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise, and to negotiate and sell $500,000 five per cent. bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued." Now, I will ask you what was done towards placing the bonds in your possession; what was done at the time for the purpose of carrying it out; did they turn over any bonds?

A. Yes, sir. Mr. Adams turned over his, and I got two bonds from Mrs. Johnson, as was provided to be done, and two from the Third National Bank when the note was paid.

Q. Now, in order to get these bonds held by Mrs. Johnson, what did you do? Did you have to pay anything?

A. I had to pay her $1,500 at the request of Mr. Adams.

Q. Did you pay anything to get these bonds from the Third National Bank, that was St. Louis, was it?

A. Yes, sir.

Q. What did you have to do?

A. I paid a note for $750.

Q. Whose note was that?

A. That was a note of the Belleville and St. Louis Railway Company, and signed by Edward L. Thomas as general manager; I should say that was the way it was signed.

Q. Now in order to get the other bonds what arrangement was made with the First National Bank?

A. There was an agreement with the First National Bank to turn over these bonds on certain conditions, and they were turned over.

Q. Well, under what authority were you entitled to these bonds?

A. It was under this contract; Mr. Thomas helped me obtain possession of them from the First National Bank; the negotiation was made through Mr. Thomas.

Q. And you got them by making a certain agreement which was all; which was done?

A. Yes, sir.

Q. Now this agreement says that they were to transfer to you, Samuel H. Leathe, $255,000, and to Lucien M. Chipley $78,300 of the stock of the Belleville and St. Louis Railway Company; now state what steps, if any, were taken to deliver that stock to you, or was any of it delivered to you?

306 A. Yes, sir, some of that stock was delivered; Mr. Bart S. Adams turned over his stock to me; Mr. Thomas made an attempt to deliver his stock to me which was not successful; Mr. Stoddard the cashier of the Third National Bank refused to turn it over without the consent of Mr. Gould, who was absent at that time.

Q. What was the trouble?

A. Mr. Thomas authorized him to turn it over to me, and was indignant, that they would not do it; but I didn't get possession of it until recently.

Q. Well, Mr. Thomas directed them to turn it over to you?

A. Yes, sir; Mr. Thomas directed it; he had a note that the stock should not be delivered to anybody without his consent.

Q. Who made that note?

A. Mr. Stoddard.

Q. The cashier of the bank?

A. Yes, sir, the cashier of the bank.

Q. Well, the only trouble was they could not be transferred because they were pledged for some other debt?

A. They were pledged for collateral for another affair.

Q. That was a debt of Mr. Thomas, was it?

A. I so understood it; I supposed at the time I paid the $750 that that gave me the stock; I supposed it would be turned over to me on that payment, but it seemed they had made some arrangement and Mr. Stoddard did not feel that he could do that for some rea-

son or another; he did not say that there was any receipt out for it, but he could not do it because Mr. Gould was absent, and he wanted to be authorized by him; the understanding was that it would be turned over to Mr. Thomas as soon as that was obtained.

Q. Well, you say Mr. Thomas made some effort to get the stock and did not succeed?

A. Yes, sir, and then it was dropped and left and no further effort made for some time.

Q. And you have only received it lately?

A. Yes, sir, I learned subsequently that a garnishment process had been served on Mr. Stoddard and he was garnisheed and could not deliver it; that was the reason of the dropping of it; Mr. Kent was the man who garnisheed Mr. Stoddard on an outstanding note of his and he claimed——

Q. Mr. Leathe, where was that contract of Jan. 24th kept; in whose possession was it ever since that day?

A. It was in my possession.

Q. It was in your possession until it was introduced in evidence in this case?

A. I think so.

307 Q. I will ask you whether from that time forward you have acted under that contract?

(Objected to; objection sustained; to which ruling of the Court the Complainants by their Counsel then and there excepted.)

Q. Did you do these things?

A. Everything that I did was under this contract.

Q. Now Mr. Leathe, you say everything you did——

A. Everything I did and all the money I paid out was under this agreement. Subsequently we took on this other charter of which it was stated here it was done at my urgent request. It was not so; I never requested that charter and did not know anything about it; it must have been made by placing Mr. Chipley in my stead.

Q. Did you ever change that contract?

A. Never to my knowledge. The gentlemen here seemed to know a great deal more about the alteration of it than I do; I did not know anything about this thing of the alteration of the contract; it was entirely new to me; I never heard it spoken of until a few days ago.

Q. What about the Belleville City Railway Company, how did the Belleville City Railway Company come into this, what do you know about that?

A. I learned of that through Mr. Chipley; he had a copy of the ordinance and so forth, and seemed to think it was of great value, and I had very serious doubts about those; I thought it was too old but he seemed to think otherwise, and Mr. Thomas himself said it was alive; I did not place that value on it that Mr. Chipley did by any means.

Q. Well, what did you agree to do about it?

A. I agreed that it might go in, I did not object to it. I was willing it should come in.

Q. To be used?

A. To be used if it was of value and to be dropped if it was not.

Q. Now in order to get hold of that and to get in under that charter what were you advised was necessary to be done, or what did you do?

A. There was a meeting called of the different corporations, and there was one called for March 25th.

Q. Did you come to see Mr. Charles W. Thomas and Mr. Edward L. Thomas on one day previous to this meeting of March 25th?

A. Well, I met Mr. Charles W. Thomas in Mr. Chipley's office and I met Mr. Edward L. Thomas there.

308 Q. There was something said here about you meeting them together?

A. I do not remember positively of ever meeting them together.

Q. There was something said by Mr. Charles W. Thomas that he said that taking in the charter of the Belleville City Ry. Co. would abrogate the existing contract?

A. That was not said in my presence; I never heard that until I heard it here.

Q. Now previous to the meeting of March 25th did you ever decline to sign that contract?

A. I never declined to sign it. I did not sign it immediately at the time it was presented to me because I took it under further advisement to look the matter over and look over the scheme and so forth.

I did not sign it immediately. I do not think anybody asked me to sign it; I have no recollection of anybody at that time asking me to sign it. I remember one time Mr. Thomas putting this to me. "I do not know that you ever signed that contract." I said to him "I have been acting under it; I have been purchasing property under it, and so forth," and he said no more.

Q. Do you remember any other conversation with Mr. Thomas about signing that, or is that the only one you know of?

A. That is the only one I have had with him about it.

Q. Mr. Chipley said you signed that contract——

A. Mr. Chipley signed that contract in the office in the Security Building; Mr. Chipley never used a pen in my house to the best of my knowledge. Mr. Chipley thought we ought to sign it and we signed the contract. I did not object at all; I didn't think it was important; I never thought it was necessary to sign it.

Q. Did you say that you was to forget the date or anything of that kind?

A. No sir, I did not think the signing of that was very important.

Q. Then as he signed it you took the pen and signed it?

A. I did; I first signed it; I signed it before him.

Counsel for defendant then gave notice to the complainants to produce a bill in chancery which was filed in this court or presented

to the court for an injunction in August 1893 between the same parties to this suit.

Mr. KOERNER: Mr. Leathe, I will call your attention now to the meeting of these corporations called for March 25, 1893. Do you remember those meetings?

A. I do.

Q. Now when these meetings were determined upon in
309 conversation with you when you and Mr. Thomas or any of these parties met was it ever suggested that the purpose was to abrogate or change the existing contract that you had?

A. Never, I never heard them talk of any such thing.

(Objected to because the minutes speak for themselves, objection overruled, and defendant then and there excepted.)

Q. What, then, was the purpose of these meetings as you understood it?

A. The purpose was for conveying the property of the Belleville & St. Louis Railway to the Belleville City Railway Company, that was the arrangement.

Q. Did you have any reference as to which name the enterprise was to be conducted under?

A. I had no preference, except that if the Charter of the Belleville City Railway Company was of any value we should assume it; we did not propose to lose sight of the other charter.

Q. Now, Mr. Leathe, what was contemplated to be built under either of these charters; what was the enterprise that you were in?

A. To build a railway from East St. Louis to Belleville.

Q. Was it the railway which was already under way?

A. It was; part of it had been graded.

Q. Did it make any difference to you whether the bonds were issued by one company or the other?

A. Only that they should be issued by the one under which we were operating.

Q. You were to be secured on the same ground?

A. On the same basis, yes, sir.

Q. The same property?

A. Yes, sir.

Q. Now when you went to Belleville to these meetings, for the purpose you have stated, what did you find there at the meetings?

A. I found the papers all prepared; I found Mr. Charles W. Thomas and Mr. Edward L. Thomas there prepared to carry this thing through very rapidly; the papers were prepared and written up and read by Mr. Charles W. Thomas in a very hasty manner; we did a great deal of business in a very short space of time.

Q. Now, as far as you were concerned, Mr. Leathe, what was the purpose of attending these meetings?

A. My purpose was for carrying out what was proposed, to change from one corporation to the other.

Q. Was there any suggestion that that should change the existing contracts?

A. None whatever.

310 Q. Now those deeds that passed between you and from you to the company, who prepared those deeds?

A. Charles W. Thomas; that is my recollection of it, he prepared them, in fact, I know he did.

Q. Well, you accepted one and signed the other?

A. I did.

Q. In the same sense and with the same purpose?

A. The same; for the purpose of transferring the property from one company to the other through me as a medium.

Q. That course was chosen by these gentlemen, was it?

A. Yes, sir, it was.

Q. Then you signed a paper or a resolution rather, which was adopted. I do not know whether the court is fully aware of that; you might read it, Mr. Leathe.

The COURT: Is that the resolution of the Belleville City Railway Co., adopted at the stockholders' meeting of March 25, 1893?

A. Yes, sir.

The COURT: I think that has all been read.

Mr. KOERNER: I will draw your attention to it to refresh your memory, that part of it which you signed.

A. Yes, sir, that was all done in pursuance of an agreement of January 24th.

Q. Was there any intimation or suggestion that that was in abrogation of this other contract?

A. None whatever; no such thing was ever mentioned by anybody, I don't think.

Q. It has been stated here that at one time during the meeting when you accepted the deed from the Belleville & St. Louis Railway Company to yourself, which states a consideration of one dollar and other valuable considerations, that you agreed that the other valuable considerations should be in your paying the then existing indebtedness of the Belleville & St. Louis Railway Company?

A. That is not so, that is absolutely not so.

Q. Did you ever hear of that since that time?

A. I never heard of it until I heard it here in this room, never.

Q. There was never such claim made on you before that time?

A. No, sir.

Q. Do you remember of any remark looking that way?

A. None whatever, none whatever had I, I would have disposed of it very quick; I would have had nothing to do with it.

311 Q. Do I understand you that ever made such an agreement?

A. I never did; I would have been insane to have done it; it would have been absurd on its face; in the first place I had not the money to do it and besides all these items of expenses submitted to me by Mr. Thomas were to be overhauled in the future; at that time I made the agreement I never had read it at all; and the understanding was it was all to be verified; whatever was right, was to be, if the thing

went through, if it was carried out, that was to be the basis whatever was right.

Q. On the basis of what?

A. On the basis of the cost, of what was the proper cost, the reasonable cost.

Q. When was it to be paid?

A. It was to be paid after the completion of the work; it was to be paid out of the proceeds of the sale of the bonds after I had been remunerated for the money that I had expended.

Q. Did you on that day, the 25th of March, or at any other time, ever agree to pay the debts of the railroad company, except as stated under the agreement of January 24, 1893?

A. I never did and never shall, I don't think, agree to do anything of such nature.

Q. Now then, after those deeds were passed after that meeting, did you make any transfers of stock?

A. I did, yes.

Q. What book is that you have in your hand?

A. This is the Belleville City Railway Company's Transfer Stock book.

Q. I will ask you what transfers of stock did you make on the 25th day of March, 1893; I understood you to say that you have seen this book?

A. I have since the 25th day of March; I don't think I ever saw it prior to that day, I don't think.

Q. You have it before you now?

A. Yes, sir, I can refer to it; C. W. Thomas, 249 shares, March 25th; L. M. Shipley, 783 shares, March 25th; E. L. Thomas, 769 shares; B. S. Adams, 499 shares; John T. Taylor, 126 shares; Needles 19 shares same date; Samuel H. Leathe one share on the same date.

Q. Now, what was paid for it—what did you get from these gentlemen for the transfer of this stock?

A. What did I get?

Q. Yes, sir, at that time did you get anything for it?

A. I got nothing for it.

312 Q. I see this agreement of January 24th does not speak of anything going to Mr. Charles W. Thomas; how did you happen to make that?

A. Well, that was under the arrangement made between Mr. Chipley, Mr. Thomas, or between Mr. Ed. L. Thomas and Mr. Charles W. Thomas, that he was to pay him, and I was to transfer the stock.

Q. And were you requested to?

A. I was so requested, yes, sir.

Q. By Mr. Thomas?

A. Yes, sir.

Q. And the shares to Mr. Needles, how did you happen to transfer them?

A. Because I was so directed by Mr. Thomas.

Q. Now, does the aggregate amount of shares assigned to Mr.

Thomas and Mr. Needles correspond to what he was entitled to under the contract of January 24th?

A. Yes, sir, it does.

Q. Now about the amount that you assigned to B. Adams; is that the same?

A. That is the same, yes, sir.

Q. Is it the same with Mr. Taylor?

A. Yes, sir.

Q. The same with Mr. Chipley?

A. The same.

Q. Was there ever any consideration except the agreement of January 24th for these transfers?

A. None, whatever.

Q. Now was there any other agreement except that of January 24th, by which transfers were made?

A. No, sir, there was no other agreement.

Q. Well, the amount which you assigned to them was regulated as I understand you, by the agreement of January 24th?

A. There was no other agreement ever talked about being made, Mr. Thomas at one time submitted another agreement, it was submitted by letter of some kind, but Mr. Chipley would not accept it; a few days afterwards he wanted to take this back and substitute another one, which we would not give back; it was a letter of Jan. 12th that he wanted to change

Complainants then gave in evidence the stock transfer book. I hereby assign and transfer unto Samuel H. Leathe, four thousand nine hundred and ninety-five shares of the capital stock of the Belleville City Railway Company, subject to the call of one
313 hundred per cent. made thereon this day by the board of directors of said company, which he assumes.

March 25, 1893. CHARLES W. THOMAS.

For value received I hereby assign and transfer to Charles W. Thomas, two hundred and forty-nine shares (249+1=250) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to Bartlett S. Adams, four hundred and ninety-nine shares (499+1=500) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to Edward L. Thomas, seven hundred and sixty-nine shares (769+1=770) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to Lucien M. Chipley, seven hundred and eighty-three shares (783=783) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to John T. Taylor, one hundred and twenty-six shares (126+1=127) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to Henry M. Needles nineteen shares (19+1=20) of the capital stock of the Belleville City Railway Company.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer one share of the capital stock of the Belleville City Railway Company to Samuel Leathe.

March 25, 1893. SAMUEL H. LEATHE.

For value received I hereby assign and transfer one share of the capital stock of the Belleville City Railway Company to James H. Waddock.

March 25, 1893. SAM'L H. LEATHE.

For value received I hereby assign and transfer to James H. Waddock one share of the capital stock of the Belleville City Railway Company.

Aug. 5, 1895. BART S. ADAMS.

For value received I hereby assign and transfer to Samuel H. Leathe one share of the capital stock of the Belleville City
314 Railway Company, it being the same share assigned to me by said Leathe on the 25th day of March, 1893.

August 5, 1893. JAS. H. WADDOCK.

For and in consideration of five hundred and fifty dollars to me this day in hand paid, I hereby assign and transfer to Samuel H. Leathe five shares of the capital stock of the Belleville City Railway Company, and two shares of the capital stock of the Crown Coal & Tow Company.

St. Louis, Aug. 24, 1893. BART S. ADAMS.

For value received I hereby assign one share of the capital stock of the Belleville City Railway Company to Frederick B. Merrills.

August 26, 1893. SAM'L H. LEATHE.

Q. I will ask you now to look at this book, and see what it is.

A. That is the Crown Coal Company, organized February 17, 1887.

Q. What transfers did you make of stock in that company; it is on page 32?

A. I transferred 298 shares to Ed. L. Thomas; Taylor, 42 4/5 shares; Bart S. Adams, 129 shares; L. M. Chipley, 313 1/5 shares; Henry M. Needles, 8 shares; Charles W. Thomas, 100 shares; dated March 29, 1893.

Q. Now, under what arrangement, agreement, or contract were those transfers made?

A. Under the agreement of January 24th.

Q. Was anything paid on them by any of these gentlemen to you?

A. No, sir; nothing at all.

Q. How was the amount of stock which was transferred to each of these gentlemen arrived at?

A. It was arrived at on the basis proposed by this agreement.

Q. That is, they maintain the same proportion in this company as in the other?

A. Yes, sir.

Q. Was it on that basis that the transfer was made?

A. It was on that basis that the transfer was done.

Q. And as in the other out of Ed. Thomas' share the stock was issued to Charles W. Thomas and Henry M. Needles?

A. That is right.

Q. In the same proportion as the other?

A. In the same proportion, yes, sir.

Q. Did you at any time under your arrangement with these parties up to this date have any contract with respect to the
315 railroad or with the railroad company or anybody else except this agreement of January 24, 1893?

A. That is the only contract.

Q. Do you know Mr. Holmes here?

A. I do.

Q. How long have you known him?

A. I have known Mr. Holmes since some time in March.

Q. Only a recent acquaintance then?

A. Yes, sir; I never had met Mr. Holmes before.

Q. Is Mr. Holmes your attorney?

A. He is not.

Q. Does he represent any corporation with which you are connected?

A. He is attorney for the Belleville City Railway Company and the Crown Coal & Tow Company.

Q. In this litigation is he representing you?

A. No, sir, he is not.

Q. Since the time that he has represented these corporations of which you speak, has there been any litigation of your own in which he has been opposed to you?

A. There has; I have another attorney in St. Louis who is doing business for me and I have engaged a second one since that.

Q. Whom did Mr. Holmes represent in this business from the beginning?

A. He represented, as I understood, Mr. Bart. S. Adams.

Q. Up to now?

A. Yes, sir; I never knew Captain Adams.

Q. They have claims against these companies?

A. They have.

Q. Referring now to the statement which you made some time

ago, do you remember the controversy which occurred between Bart. S. Adams and the company last summer?

A. I do not know what you refer to now.

Q. With reference to the sale of some stock?

A. Yes, sir.

Q. Who did Mr. Holmes represent then?

A. He represented Mr. Adams and carried on the negotiations for him.

Q. I wish to call your attention to a statement made some time ago, that, in accordance with this agreement of January 24th, you had taken up a note for $750 from the Third National Bank?

A. Yes, sir.

Q. Have you that paper with you?

A. Yes, sir, I have. (Producing it.)

Complainants then gave the note in evidence.

316 (Copy.)

$750.00. 69787.

St. Louis, *November* 21, 1892.

Six months after date we promise to pay to the order of Third National Bank Seven Hundred and Fifty Dollars at —— without defalcation.

Value received.

May 24.

No. —.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS,
General Manager.

Endorsement:

David B. Gould.

Bonds # 49 & # 50. $1000 lb. Belleville & St. Louis Ry. Collateral ——. Third National Bank. Paid. St. Louis, Mo.

Cross-examination.

Cross-examination by Mr. Thomas:

Q. When did you sign the contract that you say is in force of January 24, 1893?

A. I cannot state the date on which I signed it.

Q. Was it as late as the 27th day of June?

A. It is possible.

Q. The 27th day of July?

A. No, sir, it cannot be as late as that; it may have been in June.

Q. Mr. Leathe, the contract that you speak of as being in force, provide- that you should take up this note?

A. Yes, sir.

Q. Did it provide*d* that you should take up the Johnson note?

A. Yes, sir, to furnish money to do it.

Q. You took up this note, did you?
A. I took up this note.
Q. And took my note for it?
A. I did.
Q. You demanded my note for it?
A. Yes, sir, I thought that was the best memorandum.
Q. You demanded my note for it and also Mr. Adams' note for $1500.00?
A. Mr. Adams also gave his note, yes, sir.
Q. When you bought the tug Parker did you take Mr. Adams' note for that also?
A. That was before we had made this agreement.
317 Q. Did you take Mr. Adams' note?
A. I did, and gave it back to him afterwards.
Q. After we entered into the agreement of March 25th?
A. Yes, sir.
Q. Now, Mr. Leathe, was the deed from Mr. Snyder taken in your individual name?
A. It was.
Q. This contract did not provide that any of these things should be done in your individual name, did it?
A. It was your suggestion that it should be done so.
Q. What was the reason of it?
A. Well, so as to wait until we got further along.
Q. Until you had signed the contract, was not that it?
A. No, no, there was never a condition of that kind.
Q. Was there anything sai ut that?
A. No, sir.
Q. Nothing of the kind?
A. Nothing of the kind.
Q. You never refused to sign the contract?
A. I never refused to sign.
Q. At no time and no place?
A. At no time, nowhere, except I will modify that; I will say I did not sign it at the time, but I did not refuse to sign it.
Q. You took it with you then for consideration?
A. Yes, sir, I had hardly read it; and after that I never refused to sign it.
Q. You never refused to sign?
A. I never refused to sign.
Q. You never said you would sign it to anybody?
A. To you or any other person, no, sir, and you know very well that I never refused to sign it.
Q. I do not want to get into a dispute with you about it; just answer the questions and we will not get into a dispute. Now, Mr. Leathe, this contract also provided that $150,000 should be placed in your hands, what was the purpose of that?

(Objected to on the ground that contract speaks for itself.)

Q. Was that not for the purpose of having them canceled?
A. It was for the purpose of getting the property into my possession.

Q. Were they not to be canceled?

A. There was no proposition made about that.

Q. I know, but were they not to be canceled upon the issue of new bonds?

A. There was nothing said about that.

Q. You had the book of the Belleville & St. Louis Railway Company in your hands?

318 A. No, sir, I did not.

Q. — wrote you a letter for it; I mean prior to this agreement?

A. No, sir, I had no book.

Q. You never had seen it?

A. I never had seen it very closely.

Q. Well, you were to take these bonds and hold the $150,000, that is right so far?

A. I did.

Q. So you went to the bank here and made a contract with the First National Bank there in Belleville to get $90,000?

A. You went with me and drew up a sort of an agreement, I think there is a copy here.

Q. Let us see that copy. That is what I want.

A. I do not know where it is; I do not know that I have it; I guess I am mistaken; I have not got it here.

Q. It provided that you should return to the bank the old bonds? New bonds or the money before the 27th day of August?

A. Before a certain date, yes, sir.

Q. Six months after the 27th day of February.

A. I do not remember exactly the date.

Q. Well, now you say you were working all this time under this contract of January 24th?

A. I was.

Q. It was not abrogated in any sort of way?

A. No, sir, not to my knowledge.

Q. What made you go to the bank on the 27th day of August and offer to deliver the old bonds back to it, if you were working under this contract?

A. Because it was provided in the agreement with the bank; the new bonds had not been issued.

Q. But, under this contract, what made you offer the old bonds back?

A. Because it was so provided for under this agreement?

Q. But you say you were acting under this agreement; you say you wanted to carry out this contract?

A. Yes, sir.

Q. And yet, notwithstanding that, on the 22d day of August you go to the National Bank and offer back $90,000 of these bonds to them?

A. Because I had an option to do which I pleased.

Q. You had an option to issue new bonds?

A. I thought I would leave those there for the present

Q. You had an option to issue new bonds also didn't you

A. I had an option to issue new bonds when they were ready.

Q. Did I not try to get you to issue them all along?

319 A. You were trying to get them in New York, and you owed, and they would not do it until you paid it.

Q. That was a debt of the company. Did you try to get them, and did you not afterwards get the bonds?

A. Your brother, Charles W. Thomas, and myself did it.

Q. When did you get them?

A. I do not recall the date; they are dated July 1st.

Q. Did you not get them, and have them here and signed, before the 1st of August?

A. The mortgage was not executed.

Q. But they were ready?

A. The bonds were ready, but there was no mortgage.

Q. Everything was done, was it not?

A. No, sir.

Q. Who delayed it, you?

A. I think your brother.

Q. Did you not file a bill, Mr. Leathe, to enjoin the proceedings ordering you to issue these bonds by the Belleville City Railway Company?

A. No, sir. I did not for that purpose, no, sir; not for that purpose. It was for holding meetings that were not regular.

Q. You say you did not? Did not that meeting provide?

A. I knew of nothing that had been done at that meeting.

Q. You did not?

A. No, sir.

Q. Did not Charles W. Thomas explain the matter to you before that meeting was held, and drew up those resolutions and presented them to you?

A. I should say not; I should say no.

Q. Is it possible that he did?

A. If he did I could find it.

Q. And yet you say you knew nothing of what was going on; what was taking place?

A. I did not know.

Q. He practically stated to you what was going to take place.

A. No, sir.

Q. There was no resolution drawn up and presented to you?

A. No, sir.

Q. Prior to that time?

A. No, sir, I should say not.

Q. Do you say yes or no?

A. I should say that to the best of my knowledge and belief there were not.

Q. Now, Mr. Leathe, have you not got memory enough to

320 know whether or not that thing was done by Charles W. Thomas?

A. I say without any hesitation I think they were not.

Q. I will ask you if you did not call a meeting of the Board of Directors for the 9th day of August?

A. I did not.
Q. Did you write a letter directing the secretary to call it?
A. No, sir, I did not.
Q. You did not?
A. No, I did not.
Q. Charles W. Thomas was secretary?
A. Yes, sir, he was secretary. Did you say directors' meeting not a directors' meeting, a stockholders' meeting.
Q. Did you say stockholders' meeting?
A. Did I say directors' meeting.
Q. Did not Mr. Charles W. Thomas that day or a day or two prior to that tell you there was no necessity of the stockholders' meeting, that it must be a directors' meeting, and that you thereupon called it?
A. That is, I objected to it.
Q. And you thereupon called it?
A. A stockholders' meeting.
Q. Did you say so?
A. I say so.
Q. Now Mr. Leathe, on the 9th day of August you were notified by the secretary that four of the directors had met and that they had held a meeting and would hold a meeting on the 11th of August and wanted you present?
A. Yes, sir.
Q. Did you attend that meeting?
A. No, sir.
Q. The proceedings that were then had you knew of and you say they were for the purpose of getting you to issue these bonds, were they not?
A. No, sir.
Q. Was that not the sole purpose of the meeting?
A. No, sir, that was not the sole purpose of it.
Q. Well, then, you had plenty of time to issue these bonds before the 22d day of August, did you not?
A. There would have been time enough if the circumstances had been favorable.
Q. From the time of the return of my brother in the middle of July these bonds were here by the 1st of July?
A. Well, I do not recollect the exact date.

Q. Now, then, after the mortgage was printed, Mr. Leathe,
321 was there not ample time and more than ample time for you to get those bonds out prior to August 22d?

A. If we had pressed business perhaps there might have been.

Defendant then gave in evidence the record of the meetings of directors of the Bellevile City Railway Company.

VOLUME II.

WEDNESDAY, *August 9th*, 1893—10 o'clock p. m.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office at and in pursuance of a call of the president, whereof all the directors had notice, on Wednesday, August 9, 1893, at 10 o'clock A. M., the following proceedings were had. In the absence of the president and vice-president, Mr. Bart S. Adams was made president of the meeting. Present: Thomas, Adams, Waddock and Taylor. Mr. E. Thomas moved that inasmuch as important business was to be transacted by the board, and it was for the best interest of the company that all the directors should have an opportunity to be present, that the board adjourn to meet again at the company's office on Friday, August 11, 1893, at 10 o'clock A. M., and that the secretary be directed to notify all the absent directors thereof. Mr. Taylor seconded the motion and it was unanimously adopted, and the board adjourned in pursuance of said motion.

CHARLES W. THOMAS, *Sec'y.*

BART S. ADAMS,
President of Meeting.

FRIDAY, *August* 11, 1893.

At a meeting of the board of directors of the Belleville City Railway Company, held at its office in the city of Belleville, Friday, August 11, 1893, in pursuance of the last adjournment, the following proceedings were had. Present: Thomas, Adams, Waddock and Taylor. Mr. Adams in the absence of the president and vice-president was made presid.. *pro tem.*, for the purpose of this meeting. The secretary then presented to the board the following report. To the board of directors of the Belleville City Railway Company. The undersigned secretary of said company respectfully reports that the president of said company has caused 500 bonds of the company to be engraved and signed by the president and secretary and sealed with the seal of the company, representing an indebtedness of $500,000 upon the form set out in the annexed mortgage or deed of trust, and that the secretary has caused to be prepared for execution, a mortgage or deed of trust, a copy of which, omitting the signatures, is hereto appended. August 11, 1893.

CHARLES W. THOMAS, *Secretary.*"

322 Mortgage appended to said report.

Mr. Taylor then introduced the following resolution, and moved its adoption:

Resolved, That the acts and doings of the President and Secretary as set out in the foregoing report spread upon the records of the company, be ratified and approved by the Board. Mr. Waddock seconded the motion, and it was adopted by a unanimous vote.

Mr. Thomas then introduced the following resolution, and moved its adoption:

Resolved, That the President and Secretary be directed to execute the mortgage or deed of trust set out in the report of the Secretary,

this day made to the Board, and to deliver the same with the $500,000 of the bonds of the company already executed, to the St. Louis Trust Company, Trustee, named in the mortgage, to be dealt with as agreed between this company and said trust company. Mr. Taylor seconded the motion, and the resolution was adopted.

Mr. Waddock introduced the following resolution, and moved its adoption:

Resolved, That the Treasurer of this Company be directed to procure and receive from the St. Louis Trust Company the $500,000 of the bonds of this company and to deliver them to Samuel H. Leathe individually, under his contract with this company, to be handled and used by him as therein provided. Mr. Thomas seconded the motion, and the resolution was adopted.

Mr. Taylor introduced the following resolution, and moved its adoption:

Resolved, That the treasurer be directed to pay to Edward C. Rice, of the first money coming into his hands as the proceeds of the company's bonds, the sum of $1,500, in payment of amount advanced to this company by said Rice for the purpose of purchasing a right of way along the St. Clair County turnpike, the said Rice to accept said sum as in full of all his claims and demands upon or against this company, and that the secretary be directed to inform Mr. Rice that this company acknowledges the said indebtedness. Mr. Waddock seconded the motion, and the resolution was adopted.

Mr. Thomas introduced the following resolution, and moved its adoption:

Resolved, That Charles W. Thomas be allowed and paid the sum of five hundred dollars for the services to this company prior to March 25, 1893. Mr. Waddock seconded the motion, and the resolution was unanimously adopted. Mr. Charles W. Thomas
323 stated to theBoard that he desired that the said sum of $500 be applied in payment of the calls on five shares of the company stock, now held, one share each, by himself, Henry M. Needles, Bartlett S. Adams and Edward L. Thomas. Mr. Taylor moved that Mr. Thomas'-request be granted. Mr. Waddock seconded the motion, and it was carried. Mr. Taylor moved that the President and Secretary be directed to issue certificates of stock to the stockholders of record. Mr. Thomas seconded the motion, and it was adopted. On motion, the Board adjourned, to meet on Monday, August 21, 1893, at 10 o'clock A. M.

CHARLES W. THOMAS, *Secretary.*

Bart S. Adams, President *pro tem.*, August 21, 1893.

Q. Don't you know that Mr. Bart S. Adams, Mr. John T. Taylor and myself, and Mr. Charles W. Thomas were urging you all the time to issue these bonds?

A. You were urging me to hold meetings, to oust Mr. Chipley.

Q. Did you not tell Mr. Taylor and Mr. Thomas that you were going to hold a meeting on the ninth day of August?

A. He was to hold a meeting on the 9th of August, and I notified your folks by letter that I could not get away, and postponed the

meeting; but that was a stockholders' meeting; I never called a directors' meeting, because we wanted to do things as stockholders that could not be done by directors.

Q. What was that?

A. I do not recall what the business was, but we wanted to have a stockholders' meeting.

Q. Don't you know, Mr. Leathe, there was nothing that the stockholders could do at that time at all?

A. Yes, sir, there were some changes in some proceedings that must be done by the stockholders.

Q. What were they, Mr. Leathe?

A. I do not think I could recall the object of the meeting.

Q. Now, Mr. Leathe, you said a moment ago that you intended to take this Belleville City Railway Company charter and use it, and if you found you could not use it, that you would go back to the Belleville & St. Louis Railway Company?

A. That is right.

Q. That was your intention?

A. Yes, sir.

Q. There is no question about that now, at all?

A. There was no question but that we were to hold onto the old charter.

Q. None whatever?

324 A. No, sir.

Q. There was no question you were to hold on to it?

A. And we continued to hold on to it.

Q. Did you sign this affidavit, Mr. Leathe?

(Showing witness a paper.)

A. That is my signature.

Q. You swore to that?

A. I suppose so.

Q. Was that the truth?

A. Yes, sir.

Q. It was true, was it not?

A. It was so intended.

Q. You say in this, Mr. Leathe, the following: "But the intention and purpose controlling all parties in the transaction was to simply change the corporation of the Belleville & St. Louis Railway Company to that of Belleville City Railway Company, and thereby terminate and wipe out the corporation known as the Belleville & St. Louis Railway Company." Was that true?

A. Yes.

Q. Now you say it was not the intention?

A. I do not say it was not the intention.

Q. In this affidavit you have said so?

A. I say up to a certain date.

Q. Did you not just a few minutes ago swear that you intended to preserve that charter?

A. We wanted to preserve that; the intention was to preserve the corporation.

Q. The Belleville and St. Louis Railway Company?

A. Our right to fall back on that charter.

Q. And here you swear the intention was to wipe out that corporation; which is true?

A. I place no importance upon that statement.

Q. Mr. Leathe, is that letter written by you?

(Showing witness a letter.)

A. That is written by me; yes, sir.

Q. Is that letter written by you?

(Showing witness another letter.)

A. That is written by me.

Q. Why did you write all those letters?

A. Let me read them; they will explain themselves.

Q. What was the reason that you addressed Mr. Bart S. Adams with a letter?

A. I notified him of a meeting to be *be* held, and as I could not attend, that was to save him the trip over here.

Q. You notified him there would be a meeting?

325 A. Yes, sir; I notified him there would be a meeting.

Q. Now, do you not state in this letter to the secretary that you had called a meeting for the next Wednesday and for him to notify the members?

A. I will have to refer to my letter-book for that.

Q. This is written by you?

A. That is written by me.

Defendant then gave the letters in evidence as follows:

ST. LOUIS, *Aug.* 5, 1893.

Chas. W. Thomas, Secretary.

DEAR SIR: I find it will not be convenient for all of us to attend a meeting at Belleville Tuesday, as proposed, and have named the following day, Wednesday, of next week; if you have any engagement for that day which will interfere, please inform me by return mail and fix another date, I will depend upon you to notify our Belleville associates and I will do the same here verbally, will be over on the morning train.

Truly yours, S. H. LEATHE.

ST. LOUIS, *Aug.* 4, 1893.

Bart S. Adams, Esq.

DEAR SIR: On account of business engagements which did not occur to me until this evening, I find it will be impossible for all of us to attend a meeting at Belleville to-morrow as proposed, will arrange for a meeting early part of next week probably. Please call at the office tomorrow afternoon if down-town.

Very truly yours, S. H. LEATHE.

Q. You personally notified Mr. Edward L. Thomas, Mr. John Taylor and Mr. Needles that the meeting would take place, didn't you?

A. I did not give them official notice.

Q. You told them that there would be a meeting on a certain day?

A. And afterwards I found I could not do it; I don't remember the date.

Q. You do not remember that?

A. No, sir; we made several attempts; we made more than one attempt to call a meeting, and were unsuccessful.

Q. Now, these meetings on which these proceedings as shown, you knew of those meetings of August 9th and 11th?

A. Yes, sir; I heard of them.

326 Q. I will ask you, Mr. Leathe, if you wrote this letter to Mr. Charles W. Thomas, the secretary, on August 5th?

A. I cannot say, perhaps I can recall it if I see the letter?

Q. Now you say that you did not know anything about this resolution? That Mr. Thomas had not said any thing to you about it?

A. Well, he may have said something about some resolution but not those that were passed, the resolutions shown me were not those that were passed.

Q. That is what you say?

A. Yes, sir; have you got my reply to that letter?

Q. I don't know that you replied at all; now Mr. Leathe, after you had written these two letters to the secretary dated August 5, 1893, and 9th you made this affidavit and swore to it, didn't you?

A. What is the date of these letters?

Q. August 5th, and the affidavit is dated August 17th, you can see the date of the affidavit there.

A. Yes, sir; I see it.

Q. You made that affidavit also?

A. Yes, sir, I made that; that is my signature.

Defendants then gave letters of August 5th and 9th of Charles W. Thomas in evidence.

AUGUST 5, 1893.

Mr. Samuel H. Leathe, President, &c., St. Louis.

DEAR SIR: After your departure this morning Mr. Bart S. Adams and Mr. James H. Waddock came to this office and Mr. Adams assigned upon the stock-transfer book one share of this company's stock to Mr. Waddock. I then explained to Mr. Waddock that in order to make effectual the assignment of one share which he had made to you it would be necessary to place his assignment of record, as under the law the officers of the company could recognize no assignment not entered in the stock-transfer book. After the matter was explained to him he made a proper transfer of one share to you, leaving still the holder of one share. He also notified me that his resignation as director not having been accepted by the board was withdrawn. I took occasion to explain to Mr. Adams and Mr. Waddock the purpose of the proposed meeting, and obtained their express promises to put no obstacles in the way. They assured me that as personal favor to myself they would vote for all the resolutions I showed you this morning no matter who opposed them. I explained to them the purpose of each resolution, and believe I can guarantee that every-

thing will go as planned, even although Mr. E. L. Thomas and Mr. Taylor might object, which I do not know of.

Yours etc., CHARLES W. THOMAS.

August 11, 1893.

Mr. Samuel H. Leathe, President.

327 AUGUST 9, 1893.

Mr. Samuel H. Leathe, President:

In accordance with your call four directors met at the company's office this morning at 10 o'clock. At my suggestion no business was transacted. The board, however, having a quorum adjourned to meet again at this place next Friday morning, 11th inst., at 10 o'clock, and directed me to notify all absent directors of its action, which I have done. From statements made by the directors individually I have no doubt that at the adjourned meeting they will proceed to the transaction of business, but so far as I could learn there was no disposition to do anything that will not agree with your views as heretofore expressed to me. I think you made a mistake in not attending the meeting as called, and hope you will be present on Friday. If you suppose that the meeting will be inharmonious I am confident that you are mistaken.

Yours very truly, CHARLES W. THOMAS, *Secretary.*

Q. You went to Mr. Holmes at East St. Louis when you were coming over here to attend a meeting on March 25th, and asked him to attend to your interests at this meeting?

A. To look after my interests, yes, sir; I knew he was acting for Mr. Adams.

Q. You paid him for those services?

A. No, sir.

Q. He has a bill?

A. He never made a bill for it; if he charged me for it he has never collected it.

Q. But you employed him to attend to your business; you spoke to him in that way?

A. I spoke to him as Mr. Adams' attorney.

Q. Well, you spoke to him as an attorney to attend to your business?

A. I did not care to employ him as an attorney; but knew that in looking after Mr. Adams' interests he would be looking after ours at the same time.

Q. Now, Mr. Leathe, did you ever request a transfer of the Belleville and St. Louis Railway stock?

A. A transfer to me?

Q. Yes, sir.

A. I cannot say that I did.

Q. You never did?

A. No, sir.

328 Q. You swear in this bill here that I had nearly five thousand of the stock. Did you ever ask me to assign one to you?

A. I don't think I ever knew that you had them. I understood they were all in the bank that you had.

Q. They were to be issued under that contract?

A. I suppose under the contract the stock had to be issued.

Q. Now Mr. Leathe, you say in regard to this Bank matter that you tendered back the old bonds?

A. Yes, sir.

Q. Had you not agreed with me that you would not tender back the old bonds, but would deposit new bonds in their place?

A. I had not.

Q. Will you look at that? (Handing witness a paper.)

A. That was an option which I carried out.

Q. That is your writing, is it not?

A. Yes, sir.

Q. That is signed by you?

A. Well, it is signed by me, yes, sir.

Q. And Mr. Charles W. Thomas witnessed it?

A. Yes, sir, that is true.

Q. What is contained in that was the arrangement, was it not?

A. That was made at the time.

Q. Now in the face of that you say that you did not agree with me to put $25,000 of new bonds in the bank?

A. I agreed on certain conditions, if this thing was carried out; that was to be contingent.

(Mr. Thomas reads the paper.)

St. Louis, *March* 25, 1893.

In consideration of the conveyance to me this day of the S. W. quarter of Section 11, Township 1 North, of Range 9 West, in St. Clair County, Ill., by Mary O. Thomas and Edward L. Thomas, I hereby agree to advance the necessary reasonable amount of money to purchase the fractional portion of said quarter section, owned by H. E. McDonald, being about seven acres; which sum so advanced with interest is to be charged to Edward L. Thomas and deducted from moneys or bonds, at my option, coming to him. I further agree to turn over to the First National Bank of Belleville $25,000 of the Bonds of the Railway Company, which we are now proposing to build, as soon as said bonds are issued to me, as per my previous agreement with said bank. I further agree to put said lands into said Railway and Coal enterprise, when the same shall have been duly organized as proposed. It is understood that this year's rental of said tract to August 1, 1893, shall be retained by said Mary O.
329 Thomas, $24,000, of which $25,000 of bonds herein referred to, constitue the purchase money of the lands herein described, and belong to Mary O. Thomas, subject to the lien of the Bank, as collateral for indebtedness of E. L. Thomas to the bank. It is further understood that, should the remaining portion of the aforesaid quarter section not be purchased as contemplated, a proportionate reduction shall be made in the purchase money of said quarter section, and the bonds included in such reduction shall belong to S. H. Leathe, subject, as before, to the lien of the bank.

(Signed) SAMUEL H. LEATHE.

Witness:

(Signed) CHARLES W. THOMAS.

WITNESS: This is a copy of a paper which I made and never completed. Where is the original paper?

Q. You have it?

A. I should say in answer to that that it has never been executed and never been accepted.

Mr. KOERNER: All the records of the Belleville & St. Louis Railway Company and the Belleville City Railway Company, and the Crown Coal and Tow Company which either party may desire to use shall be considered as offered in evidence.

All the proceeds of the Crown Coal & Tow Co., and Belleville City Railway Company & Belleville & St. Louis Railway Company of and after March 25, 1893, are offered in evidence by the complainant.

At a special meeting of the stockholders of the Crown Coal & Tow Company, held at its office in the City of Belleville, County of St. Clair and State of Illinois, at ten o'clock A. M., March 25, A. D. 1893, in pursuance of a call of the directors there was present.

Edward L. Thomas owning	58	shares.
John T. Taylor "	48	"
Bart S. Adams "	118	"
Bart S. Adams, Edward L. Thomas & John T. Taylor, owning jointly	76	"
Total (or owners of all the capital stock)	300	shares.

On motion Mr. Edward L. Thomas was made chairman, and Bart S. Adams Secy. of Stockholders' meeting.

Mr. John T. Taylor introduced the following resolutions and moved their adoption:

330 *Resolved*, That the Capital stock of the Crown Coal Company be increased to the sum of Two Hundred Thousand Dollars, to be divided in 2,000 shares of $100 each, and that the subscription books for the increased Capital Stock be now opened for the subscription thereto.

And, further resolved, That the name of the Crown Coal Company, be changed to the Crown Coal & Tow Company.

And, further resolved, That the object for which said corporation was formed be enlarged so as to include:

First. The power and authority to manufacture and sell electricity and electric light and power of all kinds.

Second. The power and authority to manufacture and sell ammonia gas, and all other products of bituminous coal.

Third. The power and authority to tow boats and barges and transport coal and other freight on the Mississippi River and its tributaries, and charge and collect toll therefor.

Fourth. The power and authority to dig, sell, and deal in sand.

Fifth. The power and authority to mine and deal in clay of all kinds, and to manufacture and sell the products thereof.

Sixth. The power and authority to quarry and deal in stone

and rock, which resolution was unanimously adopted by the stockholders present.

Bart S. Adams moved that the President of the Company be directed to prepare and file with the Secretary of the State and the Recorder of deeds of St. Clair County, a certificate embodying the action of the Stockholders as set forth in said resolution as provided by law.

Mr. John T. Taylor seconded the motion and it was unanimously adopted. Mr. John T. Taylor introduced the following resolution: Resolved, that the President of this company be authorized to purchase for Samuel H. Leathe all his coal and coal rights owned by him in St. Clair county, Illinois, and all the property lately owned by the Western Coal & Tow Company for any sum that may be agreed upon, not exceeding $191,000. Mr. Bart S. Adams seconded the motion and the resolution was unanimously adopted.

Mr. Bart S. Adams, offered the following resolution and moved its adoption: Resolved, that the president and secretary of this company be authorized and directed to execute and deliver to the Mercantile Trust Company, of New York, a mortgage or deed of trust, whereby this company shall guarantee to the extent of $200,000 and no more, the payment of the principal and interest of $500,000 mortgage bonds of the Belleville City Railway Company,
such mortgage to be in such form and to contain such pro-
331 visions necessary to carry out the spirit of this resolution
as the president may be advised are right and proper, it being the intention of this company to pledge all of its property to be acquired by it, as well as its earnings now owned and hereafter — easements, privileges and profits to the faithful performance of such guaranty.

Mr. Taylor seconded the motion, and it was unanimously adopted. Mr. Taylor introduced the following resolution: Whereas, the sum of $8,900 has been paid upon the capital stock of this company as follows:

By Edward L. Thomas	$600 00
" John T. Taylor	500 00
" Bart S. Adams	6,300 00
" T. A. Meysenburg	1,500 00

Now, therefore, it is resolved that full paid certificates be issued to the above named stockholders or their assigns for such share and fractions of shares as would be paid by the respective amount above mentioned as follows:

By Edward L. Thomas	11
" John T. Taylor	10
" Bart S. Adams	68
Total	89

And that said stock be hereafter fully paid up stock of the company, and that all other stock be subject to calls until it is fully paid up; this resolution being based upon doubts which have arisen as to whether any other of the stock of this company other than the $8,900 above mentioned is actually paid up stock, and because it is desirable that all of said stock should be fully paid up.

And now Mr. Samuel H. Leathe appeared before the meeting and proposed to subscribe for the increased capital stock of the company amounting to $170,000, and he having during the progress of the meeting acquired by assessment all of the unpaid capital stock as decided in the foregoing resolution, he proposed to pay the $170,000 of the capital stock to be by him subscribed and the $21,100 held by him by assignment by selling, conveying, transferring to this company all the coal and coal rights owned by him in St. Clair county, Illinois, and all the property lately owned by the Western Coal & Tow Company which he had acquired and a list of which is submitted.

Mr. Taylor moved that Mr. Leathe's proposition be accepted, and that he be permitted to subscribe for the $170,000 increased capital stock of the company and to pay up his $191,100 of stock by a conveyance to the company of the property mentioned
332 in his proposition, and that inasmuch as the property so to be conveyed is amply worth the sum of $191,100, the capital stock of the company upon the execution and delivery of such conveyance be declared to be fully paid up and subject to no further calls or assessments for any purpose whatever. Mr. Adams seconded the motion and it was unanimously adopted. There being no further business before the meeting it was adjourned.

EDWARD L. THOMAS, *Chairman.*

Attest:

BART S. ADAMS, *Sec'y.*

We, the undersigned, being all the stockholders of the Crown Coal Company, hereby ratify and confirm all the proceedings here above set forth.

March 25, 1893.

BART. S. ADAMS.
EDWARD L. THOMAS.
JOHN T. TAYLOR.

I, Samuel H. Leathe, hereby assign and transfer to the following named persons the number of shares of the capital stock of the Crown Coal and Tow Company, set opposite their respective names:

To Edward L. Thomas	298		shares
To John T. Taylor	42	4/5	"
To Bartlett S. Adams	129		"
To Lucien M. Chipley	313	1/5	"
To Henry M. Needles	8		"
To Charles W. Thomas	100		"

Dated, March 29, 1893.

SAM'L H. LEATHE.

At a meeting of the stockholders of the Crown Coal and Tow Company, held at its office in the city of Belleville on the twenty-ninth day of March, A. D. 1893, in pursuance of a call of the directors, all the stockholders being present, the following proceedings were had:

Mr. Samuel H. Leathe was made president, and Mr. Charles W. Thomas secretary of the meeting. Mr. Adams introduced the following resolution:

Resolved, That the number of directors of the Crown Coal and Tow Company be increased to seven. Mr. Taylor moved that the resolution be adopted. Mr. Needles seconded the motion, and it was unanimously adopted.

Mr. Adams moved that the president of the company be directed to make and file the proper certificates with the Secretary of the State and recorder of St. Clair County as provided by law. Mr. Taylor seconded the motion, and it was unanimously adopted.

333 Mr. Samuel H. Leathe then assigned one share of the capital stock of the company to Samuel Leathe, and one share to James H. Waddock, as follows:

I hereby assign and transfer to Samuel Leathe and James H. Waddock, each one share of the capital stock of the Crown Coal and Tow Company.

March 29, 1893.

SAMUEL H. LEATHE.

The stockholders then proceeded with the election of directors, to hold office until the next annual meeting of the stockholders and until their successors are elected. And the following stockholders were unanimously elected.

Samuel H. Leathe, Lucien M. Chipley, Bartlett S. Adams, Edward L. Thomas, Samuel Leathe, John T. Taylor and James H. Waddock, and the meeting adjourned.

CHARLES W. THOMAS, *Sec'y.*

SAML. H. LEATHE, *Prest.*

We hereby ratify and confirm the foregoing proceedings of March 29, 1893. Saml. H. Leathe, L. M. Chipley, Bart S. Adams, Edward L. Thomas, Henry N. Needles, James H. Waddock, Saml. Leathe, John T. Taylor, Charles W. Thomas.

At a meeting of the directors of the Crown Coal & Tow Company, held at its office in the city of Belleville immediately after the adjournment of the stockholders' meeting on March 29, 1893, all the directors being present, the following proceedings were had:

The board then proceeded to the election of officers, and the following were chosen: Lucien M. Chipley, President; Samuel H. Leathe, Vice-President and Treasurer; James H. Waddock, Secretary.

Mr. Samuel H. Leathe offered the following resolution:

Resolved, That the General Manager of the company, who shall have general management and control of the business of this company, subject to the orders of the President and Board of Directors. Mr. Adams moved that the resolution be adopted. Mr. Waddock seconded the motion, and it was unanimously adopted. Mr. L. M. Chipley was made General Manager, all voting aye except Edward L. Thomas, who voted no.

Mr. Leathe, upon whose motion Mr. Chipley was made General Manager, moved to reconsider the motion and the vote by which the motion was carried, and the office of General Manager was left to be filled at some future meeting, and the board adjourned.

L. M. CHIPLEY, *President.*

JAMES H. WADDOCK, *Sec'y.*

334 At a meeting of the directors of the Crown Coal & Tow Company, held at its office in the city of Belleville on the 26th day of August, A. D. 1893, in pursuance of a call of the President, all of the Directors being present, Mr. L. M. Chipley in the chair and Saml. Leathe, Secy. *pro tem.*, the following proceedings were had:

The President presented the resignation of Mr. James H. Waddock as Secretary and Director, dated August 1, 1893, and Mr. S. H. Leathe moved that it be accepted; motion was seconded by Samuel Leathe, and being put was carried by the following vote:

Ayes—L. M. Chipley, Samuel H. Leathe, Bart S. Adams, Samuel Leathe. No—Edward L. Thomas. Mr. Taylor not voting.

Mr. Samuel Leathe moved that Mr. Fred B. Merrils, of Belleville be elected a director to fill the vacancy occasioned by the resignation of Mr. James H. Waddock. This motion, seconded by Mr. John T. Taylor, was put, and the following Directors voting in favor of Mr. Fred B. Merrils:

Ayes—L. M. Chipley, S. H. Leathe, John T. Taylor, Bart S. Adams, Samuel Leathe.

Mr. Edward L. Thomas voted no. The President declared Mr. Merrils duly elected. Mr. Edward L. Thomas presented the following protest, and moved that it be spread upon the records:

Whereas, at the last meeting of the Board of Directors of this company it was agreed that Bartlett S. Adams & John T. Taylor should remain in the positions that they then occupied, and manage the coal and river business of this company, and whereas, the president and treasurer have taken it upon themselves without a meeting of this board to discharge said Taylor and prevent said Adams from performing his duties, and whereas, we have been unable to learn the status of the company by reason of failure of said president and treasurer to render to us a statement of the affairs of said company upon request by us.

Therefore, we the undersigned directors of this company protest against the action of the said president and treasurer as above set

forth, and ask that this protest may be spread upon the records of this company.

Signed by EDWARD L. THOMAS.
JAMES H. WADDOCK.
JOHN T. TAYLOR.

Dated Aug. 26th, 1893.

Copy.

335 Which motion was carried by the following vote:

Ayes—S. H. Leathe,
" —John T. Taylor,
" —B. S. Adams,
" —E. L. Thomas,
" —Sam'l Leathe.
Mr. Chipley voting no.

Mr. S. H. Leathe presents the following resolution:
Resolved, That the treasurer of this company be and he is hereby authorized to receive and give receipt for all moneys due and payable to this company from any source whatever and to endorse checks and drafts in its name and on its behalf, and full discharge for the same to give. This resolution was unanimously adopted. Mr. Edward L. Thomas and Mr. John Taylor then tendered their resignation as directors; it being moved and seconded that the resignations be laid upon the table it was carried by the following vote:

Ayes—L. M. Chipley,
" —S. H. Leathe,
" —B. S. Adams,
" —Samuel Leathe.

Mr. S. H. Leathe moved that the president select a suitable place for holding meetings and keeping the books. Which was unanimously adopted. Mr. Bart S. Adams moved that Sam'l Leathe be elected secretary of the company and Mr. L. M. Chipley seconded the motion, and Sam'l Leathe was unanimously elected secretary; the meeting then adjourned subject to the call of the president.

L. M. CHIPLEY, *President.*

SAM'L LEATHE, *Sec'y.*

BELLEVILLE, ILL., *Sept.* 1, 1893.

For value received I hereby assign to Mary O. Thomas Three Hundred Shares of the capital stock of the Crown Coal & Tow Company.

EDWARD L. THOMAS.

At a meeting of the Board of Directors of the Crown Coal & Tow Company held at its office in the City of Belleville, Ill., on the fourth day of September, A. D. 1893, at 10 o'clock A. M. in pursuance of a call of the president, the following directors being present:

L. M. Chipley in the chair, S. H. Leathe, Fred B. Merrils, Edward L. Thomas, John T. Taylor, Sam'l Leathe, the following proceedings were had. Mr. S. H. Leathe offered the following reso-
336 lution. *Resolved*, That the resignation of Mr. Edward L. Thomas and Mr. John T. Taylor as directors of the Crown Coal & Tow Company be taken from the table and accepted, which resolution being seconded by Mr. L. M. Chipley, was passed by the following vote.

Ayes—L. M. Chipley,
" —S. H. Leathe,
" —Fred B. Merrills,
" —Samuel Leathe.

Mr. S. H. Leathe then made a motion to adjourn and meet Sept. 5th at 9:30 A. M. at the office of Fred B. Merrills, which motion, being seconded by Samuel Leathe, was passed by the following vote:

Ayes—L. M. Chipley,
" —S. H. Leathe,
" —Fred B. Merrills,
" —Sam'l Leathe.

L. M. CHIPLEY, *Pres't.*

SAM'L LEATHE, *Sec'y.*

In pursuance of adjournment, the board met September 5, 1893, at 9:30 A. M. at the office of Fred. B. Merrills, which place had been selected by the president as the office of the company. Present, the president, Lucien M. Chipley, and Messrs. Samuel H. Leathe, Fred. B. Merrills and Sam'l Leathe. No business being brought before the meeting, on motion of Mr. Merrills the board adjourned.

SAM'L LEATHE, *Secretary.*

Office of the Crown Coal and Tow Company.

BELLEVILLE, ILL., *Oct.* 12, 1893.

At a meeting of the board of directors of the company held at its office in the city of Belleville, pursuant to the following notice, a copy of which was served on Lucien M. Chipley, a director and the president of its company, on the 10th day of October, 1893, to wit:

BELLEVILLE, ILL., *Oct.* 10, 1893.

Lucien M. Chipley, Director of the Crown Coal and Tow Company.

SIR: You are hereby notified that a meeting of the board of directors of the Crown Coal and Tow Company will be held at the office of the said company (office of Fred. B. Merrills) in the city of Belleville, Ill., on Thursday, October 12, A. D. 1893, at 9
337 o'clock A. M. of said day, at which you are requested to be present.

(Signed) BART. S. ADAMS,
SAM'L H. LEATHE,
SAM'L LEATHE,
FRED. B. MERRILLS,
Directors of said Crown Coal and Tow Company, Constituting a Majority of The Board of Directors of said Company

There were present the vice-president, Sam'l H. Leathe, and Messrs. Bart. S. Adams, Sam'l Leathe, Fred B. Merrills; absent, Lucien M. Chipley, president. The vice-president called the meeting to order, and Mr. Adams offered the following resolution:

Resolved, That the interests of this company require the president, Mr. Lucien M. Chipley, be removed from the office of president; and

Resolved, That the said Lucien M. Chipley be and is hereby removed from the office of president; and

Resolved, That the secretary be directed to furnish Mr. Chipley a copy of these resolutions.

Mr. Adams moved the adoption of these resolutions, which motion was seconded by Sam'l Leathe, and, being put to a vote, was adopted by the following vote:

Ayes.—Messrs. Samuel H. Leathe, Fred B. Merrills, Bart S. Adams and Sam'l Leathe. No-s—none.

The Vice-president in the chair declared the resolution adopted, Mr. Samuel H. Leathe the Vice-president then vacated the chair and on motion of Mr. Sam'l Leathe, Mr. Adams was elected chairman *pro temp.* of the meeting, Mr. Samuel H. Leathe then offered his resignation as Vice-president of the Company which was accepted.

Mr. Merrills moved that a president be now elected to fill the unexpired term of Lucien M. Chipley removed from that office, which motion was unanimously adopted. Mr. Sam'l H. Leathe was then put in nomination for the office of President to fill said vacancy, and a ballot was had which resulted as follows:

For Samuel H. Leathe four votes. No other votes were cast.

The Chairman declared Mr. Sam'l H. Leathe elected as President to fill the unexpired term of Lucien M. Chipley removed.

Mr. Samuel H. Leathe, President, then resumed the Chair. On motion of Mr. Adams, the Board adjourned.

SAM'L LEATHE, *Sec'y.*

At a meeting of the stockholders of the Belleville City Railway Company held at the office of the Company in the City of Belleville. On the 25th day of March A. D. 1893, the following proceedings were had: Present Charles W. Thomas owning 4996, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one
338 share, and Bartlett S. Adams, one share; Mr. Adams was made President and C. W. Thomas Secretary. The following named persons were then unanimously elected Directors of the Company. Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor and Bartlett S. Adams. And the meeting adjourned.

CHARLES W. THOMAS, *Secretary.*

BART. S. ADAMS,
Pres't of Meeting.

At a meeting of the Directors of the Belleville City Railway Company held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25th, 1893, the following proceedings were had, all the Directors being present; Mr.

Bartlett S. Adams was elected President of the Company and Mr. Charles W. Thomas, Secretary.

Mr. Taylor introduced the following resolution and moved its adoption:

Resolved, That a call of one hundred per cent. be made upon the Capital Stock of this Company payable on or before May 1st, 1893; and that the Secretary be directed to give written notice of this call to all of the stockholders within twenty days. Mr. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of 499,500 dollars certain property described and referred to in his deed to the company of this date, which is produced but which is not delivered.

Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give the company credit on said purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of its stock he may hereafter acquire, and may credit on said stock calls the value of the services he may hereafter perform in floating this company's bonds, and also the indebtedness due him from the company as the purchase price of said property. Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the company, 4,995 shares of the capital stock of the company, subject to the calls made thereon by Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made at this meeting upon his 4,995 shares of the stock of this company, upon the condition that he float the $500,000 of bonds of this company heretofore authorized to be issued, any of such bonds that he sells to net this company such a price as may be hereafter agreed upon between him and the board of directors of this com-
339 pany, and all the bonds that he takes or that may be paid out for property or prior indebtedness of the company to be accounted for by him at par, to the end that the railway of this company may be at once constructed and operated from some point within the original city of Belleville to the Mississippi river, and upon the further condition that Mr. Leathe protects this company from any decree foreclosing the mortgage, to secure said bonds, until one year after its said railway is in operation, and that Mr. Leathe be requested to sign the records of the proceedings of this board at the foot of this resolution as an acceptance by him of its terms and an agreement to perform its conditions. Mr. Adams seconded the motion, and it was unanimously adopted. I accept the terms of the foregoing resolution.

SAM'L H. LEATHE.

And the board adjourned to meet subject to the call of the president.

CHARLES W. THOMAS, *Secretary.*

BART. S. ADAMS, *Pres't.*

At a meeting of the stockholders of the Belleville City Railway Company held at its office in the city of Belleville, on the 25th day of March, immediately after the board adjourned the following proceedings were had: Present all the stockholders.

Mr. Samuel H. Leathe was made chairman of the meeting and Charles W. Thomas was made secretary. Mr. Chipley offered the following by-laws and moved its adoption: XVII.

The Board of Directors of this company shall hereafter consist of seven stockholders. Mr. Adams seconded the motion and the by-law was unanimously adopted. H. M. Needles, E. L. Thomas, Bartlett S. Adams, John T. Taylor and Charles W. Thomas offered their resignation as directors, and their resignation was accepted. The stockholders then proceeded to the election of seven directors. Mr. Adams moved that two tellers be appointed by the president, to take and count the ballots of the stockholders and Mr. Adams and Mr. Taylor were appointed tellers. Upon inspection of the ballots, the tellers reported that the following named persons had received the number of votes set opposite their respective names. Edward L. Thomas, 5000 votes, Bartlett S. Adams, 5000 votes, John T. Taylor, 5000 votes, Lucien M. Chipley, 5000 votes, Samuel H. Leathe, 5000 votes, Samuel Leathe, 5000 votes, James H. Waddock, 5000 votes. On motion Messrs. Thomas, Adams, Taylor, Chipley, Samuel H. Leathe, Samuel Leathe and Waddock were declared to be directors of the company until the annual meeting of the stockholders. And the meeting adjourned.

CHARLES W. THOMAS, *Secretary.*

SAMUEL H. LEATHE, *Chairman.*

340 We the undersigned, being all of the stockholders of the said company, hereby ratify and confirm all the proceedings set forth in this record book.

SAMUEL H. LEATHE.
L. M. SHIPLEY.
EDWARD L. THOMAS.
BART. S. ADAMS.
JOHN T. TAYLOR.
HENRY M. NEEDLES.
SAMUEL LEATHE.
CHARLES W. THOMAS.
JAS. H. WADDOCK.

March 25, 1893.

At the meeting of the directors of the Belleville City Railroad Company held at its office in the City of Belleville on the 25th day of March A. D. 1893, after the adjournment of the foregoing stockholders' meeting, the following proceedings were had. All the directors were present. The following persons were unanimously elected to the several offices of the company. Samuel H. Leathe, President

and Treasurer; Lucian M. Chipley, Vice-President; Charles W. Thomas, Secretary.

And the board adjourned.

CHARLES W. THOMAS, *Secretary.*
SAMUEL H. LEATHE, *President.*
L. M. CHIPLEY, *Director.*
EDWARD L. THOMAS, *Director.*
BART. S. ADAMS, *Director.*
JOHN T. TAYLOR, *Director.*
SAMUEL LEATHE, *Director.*
JAS. H. WADDOCK, *Director.*

VOLUME II.

WEDNESDAY, *August 9th*, 1893—10 o'clock A. M.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office at and in pursuance of a call of the president whereof all the directors had notice, on Wednesday August 9th, 1893, at 10 o'clock A. M. the following proceedings were had. In the absence of the president and vice-president Mr. Bart S. Adams was made president of the meeting. Present—Thomas, Adams, Waddock and Taylor. Mr. E. L. Thomas moved that inasmuch as important business was to be transacted by the board and it was for the best interest of the company that all
341 directors should have an opportunity to be present, that the board adjourn to meet again at the company's office on Friday August 11th, 1893, at 10 o'clock A. M., that the secretary be directed to notify all the absent directors thereof. Mr. Taylor seconded the motion, and it was unanimously adopted, and the board adjourned in pursuance of said motion.

CHARLES W. THOMAS, *Secretary.*

BART S. ADAMS,
President of the Meeting.

FRIDAY, *Aug.* 11, 1893.

At a meeting of the directors of the Belleville City Railway Company, held at its office in the City of Belleville, on Friday, August 11, 1893, in pursuance of the last adjournment, the following proceedings were had: Present—Thomas, Adams, Waddock, and Taylor. Mr. Adams, in the absence of the president and vice-president was made president *pro tem.*, for the purpose of this meeting; the secretary then presented to the board the following report:

To the board of directors of th*is* Belleville City Railway Company:

The undersigned Secretary of said company respectfully reports that the president of the company has caused 500 bonds of the company to be engraved and signed by the president and secretary and sealed with the seal of the company, representing an indebtedness of $500,000 upon the form set out in the annexed mortgage or deed of trust, and that the secretary has caused to be prepared for execution,

a mortgage or deed of trust, a copy of which, omitting signatures, is hereto appended.

CHARLES W. THOMAS, *Secretary.*

August 11, 1893.

Mortgage appended to said report.

Mr. Taylor then introduced the following resolution, and moved its adoption:

Resolved, That the acts and doings of the president and secretary, as set out in the foregoing report spread upon the records of the company, be ratified and approved by the board.

Mr. Waddock seconded the motion, and it was adopted by an unanimous vote.

Mr. Thomas then introduced the following resolution, and moved its adoption:

Resolved, That the president and secretary be directed to execute the mortgage or deed of trust set out in the report of the secretary this day made to the board; and to deliver the same, with the $500,000 of the bonds of this company already executed to the St. Louis Trust Company, trustee, named in said mortgage, to be dealt with as agreed between this company and said trust company.

Mr. Taylor seconded the motion, and the resolution was adopted.

Mr. Waddock introduced the following resolution, and moved its adoption:

342 *Resolved*, That the treasurer of this company be directed to procure and receive from the St. Louis Trust Company the $500,000 of the bonds of this company, and to deliver them to Samuel H. Leathe, individually, under his contract with this company to be handled and used by him as therein provided.

Mr. Thomas seconded the motion, and the resolution was adopted.

Mr. Taylor introduced the following resolution, and moved its adoption:

Resolved, That the treasurer be directed to pay to Edward C. Rice, out of the first money coming into his hands as the proceeds of the company's bonds, the sum of $1,500 in payment of amount advanced to this company by said Rice for the purpose of purchasing a right of way along the St. Clair County turnpike, the said Rice to accept said sum as in full of all his claims and demands upon or against this company, and that the secretary be directed to inform Mr. Rice that this company acknowledges the said indebtedness.

Mr. Waddock seconded the motion, and the resolution was adopted.

Mr. Thomas introduced the following resolution, and moved its adoption.

Resolved, That Charles W. Thomas be allowed and paid the sum of five hundred dollars for his services to this company prior to the 25th of March, 1893.

Mr. Waddock seconded the motion, and the resolution was unanimously adopted.

Then Mr. Charles W. Thomas stated to the board that he desired that the said sum of $500 be applied in payment of the calls on five

shares of the company stock now held one share each by himself, Henry M. Needles, Bartlett S. Adams, John T. Taylor, and Edward L. Thomas.

Mr. Taylor moved that Mr. Thomas' request be granted. Mr. Waddock seconded the motion, and it was carried.

Mr. Taylor moved that the president and secretary be directed to issue certificates of stock to the stockholders of record. Mr. Thomas seconded the motion, and it was adopted.

On motion the board adjourned to meet on Monday, August 21, 1893, at 10 o'clock A. M.

BART. S. ADAMS,
President pro temp.

CHARLES W. THOMAS,
Secretary.

AUG. 21, 1893.

At a meeting of the board of directors of the Belleville City Railway Company, held at the company's office on the 21st
343 day of August, A. D. 1893, at 10 o'clock A. M., in pursuance of the last adjournment, the following proceedings were had: Present—Adams, Thomas, Waddock and Taylor. The minutes of the two last preceding meetings were read and approved. Mr. Adams having been made president *pro temp.* of the meeting, Mr. Taylor moved that the board adjourn to meet at the company's office on Monday, August 28, 1893, at 10 o'clock A. M. Mr. Waddock seconded the motion, and it was adopted, and the board accordingly adjourned.

BART. S. ADAMS,
President pro temp.

CHARLES W. THOMAS,
Secretary.

AUGUST 26, 1893.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office on the 26th day of August, A. D. 1893, at 10 o'clock A. M., in pursuance of a call of the president, whereof all the directors had due notice, there were present Samuel H. Leathe, L. M. Chipley, E. L. Thomas, J. H. Waddock, John T. Taylor and Samuel Leathe. Absent, Bart. S. Adams. On motion the board adjourned to meet at 12 o'clock noon of this day.

CHARLES W. THOMAS, *Secretary.*

At 12 o'clock noon the board reconvened, all the directors being present. The president presented the resignation of Mr. Waddock as a director. Mr. Chipley moved that the resignation be accepted. Mr. Samuel Leathe seconded the motion, and it was carried by the following vote:

Ayes—Samuel H. Leathe, Chipley, Thomas, Adams, and Samuel Leathe. Noes, none. Refusing to vote, Taylor, Waddock, and the resignation was accepted. Samuel Leathe moved that Fred B.

Merrills be chosen to fill the vacancy caused by the resignation of Mr. Waddock. Mr. Chipley seconded the motion, and it was carried by the following vote:

Ayes—Chipley, Samuel Leathe, Adams and Samuel H. Leathe.
Noes—Thomas. Refusing to vote—Taylor.

And Mr. Merrills was declared elected as director. Mr. Chipley then introduced the following resolution and moved its adoption:

Resolved, That inasmuch as a full board was not present at the meetings of the board held August 9th, 11th and 21st inst., the proceedings of those meetings are hereby rescinded. Mr. Samuel Leathe seconded the motion, and the resolution was adopted by the following vote:

Ayes—Chipley, Adams, Samuel Leathe and Samuel H. Leathe.
Noes—Thomas and Taylor.

Mr. Chipley moved that the board adjourn. Mr. Samuel
344 Leathe seconded the motion. Pending the motion Mr. Thomas and Mr. Taylor presented their written resignations as directors to the secretary, but the board adjourned without action on said resignations.

CHARLES W. THOMAS, *Secretary*.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office, to wit: the office of Charles W. Thomas, on the fourth day of September, A. D. 1893, at nine o'clock A. M. in pursuance of a call of the president whereof all the directors had due notice of the time and place of said meeting. Present thereat: Samuel H. Leathe, President; Charles W. Thomas, Secretary; Messrs. Chipley, Samuel Leathe and Merrills. The following proceedings were had. The minutes of the last meeting were read, whereupon Samuel Leathe offered the following resolution and moved its adoption. I move that the minutes of the proceedings of this board held August 26, 1893, just read, be amended so as to show in conformity with the facts, that the resignation of Mr. Waddock as a director of the company, presented by the president, bore the date of August 1, A. D. 1893. Mr. Chipley recorded the motion and it prevailed; thereupon Mr. Edward L. Thomas presented the following communication to the board of directors:

Having resigned as a director of the Belleville City Railway Company, I am at present simply a stockholder, and only in that capacity.

Signed. EDWARD L. THOMAS.

Mr. Chipley then moved the adoption of the following resolution:

Resolved, That the resignation of E. L. Thomas and John T. Taylor as directors of this company, tendered August 26, 1893, be accepted. Samuel Leathe seconded the motion and it prevailed. Thereupon the president submitted the following report. I desire to report that in obedience to the resolution of the stockholders of this company at their meeting March 11, 1893, I have caused 500 bonds of this company, each of the denomination of one thousand

dollars, to be engraved and that said bonds have been signed by the president and secretary and the seal of the company has been placed thereon. A mortgage of trust has also been prepared and is now ready for execution. The date of the bonds is July 1, 1893, and to each one are attached coupons for payment of interest semi-annually at five per cent. The bonds are payable twenty years after date. A copy of mortgages is recorded in the minute book of this company on pages four and nineteen, inclusive. It has been found more convenient to name the St. Louis Trust Company as trustee, instead of the Mercantile Trust Company of New York as originally intended, and the St. Louis Trust Company has agreed to accept the trust.

Signed. SAMUEL H. LEATHE.

345 Thereupon Mr. Merrills presented the following resolution and moved its adoption:

Resolved, That the action of the president and secretary, as set forth in the report just read, be and the same is hereby approved.

Mr. Chipley seconded the motion, and it was adopted.

Mr. Samuel Leathe moved the adoption of the following resolution:

Resolved, That the president and secretary be directed to execute the mortgage and deliver the same to the trustee therein named.

Mr. Chipley seconded the motion, and it prevailed.

Mr. Chipley offered the following resolution, and moved its adoption:

Resolved, That the 500 bonds of this company, after execution and delivery of said mortgage, be delivered to Mr. Samuel H. Leathe, the president and treasurer of this company.

Mr. Samuel Leathe seconded the motion, and it prevailed.

Thereupon Mr. Charles W. Thomas presented the following communication:

BELLEVILLE, ILL., *September* 4, 1893.

To the Board of Directors of the Belleville City Railway Company:

I hereby peremptorily and unconditionally resign the office of secretary of this company.

CHARLES W. THOMAS.

Whereupon Mr. Thomas vacated the position, and upon motion of Mr. Chipley, Mr. Fred. B. Merrills was chosen as secretary *pro tem.*

Mr. Chipley moved that the board do now adjourn, to meet tomorrow morning, September 5th, at 10 o'clock, a. m., at the office of Mr. Fred B. Merrills, in Belleville, Ill. The motion prevailed and the board stood adjourned.

FRED. B. MERRILLS,
Secretary pro tem.

A meeting of the board of directors, pursuant to the adjournment of September 5th, 1893. Present: the president, Mr. Samuel H. Leathe, Mr. Lucien M. Chipley, Mr. Fred. B. Merrills, and Samuel

Leathe. The president having called the meeting to order, Mr. Merrills moved that the board proceed to the election of a secretary, which motion was seconded by Mr. L. M. Chipley, and was unanimously adopted. Thereupon Mr. Chipley nominated for the office of secretary, to fill the unexpired term of Mr. Charles W. Thomas, who resigned September the fourth, 1893, Mr. Samuel Leathe. The president ordered the ballots to be taken, and appointed Mr.
346 Merrills as tellor, who reported that four ballots were cast, all in favor of Mr. Samuel Leathe. The president therefore declared Mr. Samuel Leathe elected secretary, to fill the vacancy occasioned by the resignation of Charles W. Thomas. On motion, the board adjourned.

SAMUEL LEATHE, *Secretary.*

BELLEVILLE, ILL., *March* 25, 1893.

At a meeting of the board of directors of the Belleville & St. Louis Railway Company the following proceedings were had:

Present: Bart S. Adams, John T. Taylor, Alpheus Bohlen and Henry M. Needles. Meeting called to order by John T. Taylor, vice-president, in the absence of John S. Hill, president.

The resignation of John S. Hill as president and director of said company is presented and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board and Edward L. Thomas was elected to fill the vacancy. On motion Edward L. Thomas was elected president of said company.

There being no further business the board adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *March* 25, 1893.

At a meeting of the stockholders of the Belleville & St. Louis Railway Company the following proceedings were had:

Present Bart. S. Adams owner of.....	62	shares	
John T. Taylor " "	50	"	
Henry M. Needles " "	1	"	
Alpheus Bohlen " "	1	"	
Edward L. Thomas " "	876	"	
Josephine Johnson by proxy.....	10	"	
Total	1000	"	
and Edward L. Thomas owner of...	3980	"	New Stock
Henry M. Needles " " ...	20	"	" "
Total	5000	"	Stock.

On motion Bart. S. Adams is elected chairman of the stockholders' meeting and Henry M. Needles, secretary.

Edward L. Thomas offered the following resolution:

"*Be it resolved*, That the president and secretary of this company be authorized and directed to transfer and deed to Samuel H. Leathe all of the property, rights of way, easements and grading of this company as per deed presented, and bearing date this 25th day of March, 1893."

Which resolution was unanimously adopted.

347 There being no further business before the meeting, meeting thereupon adjourned.

BART. S. ADAMS, *Pres't.*

HENRY M. NEEDLES, *Secretary.*

We, the undersigned stockholders of the Belleville & St. Louis Railway Company, being present, hereby confirm the action of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ill., March 25, 1893.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

ST. LOUIS, MO., *October* 24, 1892.

I, the undersigned, Josephine Johnson, do hereby constitute and appoint Edward L. Thomas, as my agent, and in my stead to cast at a meeting of the stockholders of the Belleville & St. Louis Railway Company, to be held at Belleville, Illinois, on Thursday, October 27, 1892, such votes as I might or could cast were I present, as owner of ten shares of stock in said company. And I hereby authorize him to vote such stock in favor of the increase of the capital stock of said company to $500,000 and in favor of making a loan of $500,000, and issuing bonds therefor at such rates of interest, as the stockholders may agree upon.

I hereby consent to such increase of capital stock, and to the making of such a loan.

This proxy is given upon the express condition that the said Edward L. Thomas shall, as soon as said Thomas succeeds in obtaining capital to build said railway, he shall return to me the amount that I have invested, with interest from date of investment at six per cent. per annum, whereupon I will transfer to him the stock and bonds of said company now held by me.

Witness my hand and seal, this 24th day of October, A. D. 1892.

JOSEPHINE JOHNSON. [SEAL.]

We, the undersigned, stockholders of the Belleville and St. Louis Railway Company, being present, hereby confirm the action
348 of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ills., March 25, 1893.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

BELLEVILLE, ILL., *March* 27, 1893.

Office of the Belleville and St. Louis Railway Company.

At the regular annual meeting of the stockholders of the Belleville and St. Louis Railway Company, held at the office of said company this 27th day of March, 1893, the following proceedings were had:

The meeting was called to order by Edward L. Thomas, president of said company.

Present:	Edward L. Thomas, owner of.....	4,856	shares.
"	Alpheus Boling, " ".....	1	"
"	Henry M. Needles, " ".....	1	"
"	Mrs. Josephine Johnson, by proxy, owner of.	10	"
	Total shares represented.....	4,888	"

On motion of Alpheus Boling, Mr. Edward L. Thomas was made chairman of the meeting, and on motion of Alpheus Boling, Henry M. Needles was made secretary of the meeting.

The minutes of the last meeting were read and approved.

The meeting then proceeded to the election of two directors for the ensuing two years to fill the vacancy occasioned by the expiration of the terms of John T. Taylor and Edward L. Thomas.

Henry M. Needles being appointed teller, reported the following vote: Edward L. Thomas received 4,888 votes and John T. Taylor received 4,888 votes, and they were declared elected directors for the ensuing two years under the by-laws.

There being no further business, the meeting thereupon adjourned.

EDWARD L. THOMAS, *Chairman.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *April* 3, 1893.

Office of the Belleville and St. Louis Railway Company.

At the regular annual meeting of the board of directors of
349 the Belleville and St. Louis Railway Company the following proceedings were had: Present: Edward L. Thomas, Henry M. Needles and Alpheus Boling.

On motion the board proceeded to organize.

Edward L. Thomas was elected president, Alpheus Boling was elected vice-president, and Henry M. Needles, secretary, and Bartlett S. Adams, treasurer, for the ensuing year.

There being no further business, the meeting adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *August* 21, 1893.

Office of the Belleville and St. Louis Railway Company.

At a meeting of the board of directors of the Belleville and St. Louis Railway Company, held at the office of the company, August 21, 1893, at 2 o'clock, P. M., the following proceedings were had.

Present—all of the directors.

Henry M. Needles, secretary of the company, reported to the board that during the presidency of John T. Taylor, no action was taken under a resolution of this board, adopted September 10, 1891, respecting the settlement of affairs between this company, Edward L. Thomas and the heirs of W. A. Adams, and that since said Hill ceased to be president of the company and the said secretary had stated accounts betwen Edward L. Thomas and the company, and between Ellen S. Adams and Bart S. Adams, heirs of W. A. Adams, deceased, and this company and reports to the board that there is due from this company to said Ellen S. Adams and Bart S. Adams the sum of $27,462.65.

That the said indebtedness is composed of the following items: Money advanced to this company by W. A. Adams in his lifetime between the first day of September, 1890, and first day of April, 1891, for the purpose of constructing the company's railway, $23,674.72. Interest upon the same at the rate of 6% per annum, taking the average time during which the said money was advanced, and up to the 21st day of August, 1893, being in round numbers and omitting odd days (the interest for which was waived), the sum of $3,787.93. Total amount due being upon this day the sum of $27,462.65. And he further reports that upon stating an account between this road and Edward L. Thomas, he found to be due to said Thomas the sum of $53,022.23, which is composed of the items contained in the itemized account herewith submitted to the board and made a part of this report. Mr. Taylor moved that the report of the secretary be accepted and approved, and that the secretary of the com-

pany be directed to execute and deliver to Ellen S. Adams
350 and Bart S. Adams the promissory note of the company for the said sum of $27,462.65, due one day after date, bearing interest at the rate of six per cent. from maturity until paid, and that the secretary be further directed to execute and deliver to Edward L. Thomas the promissory note of the company for the said sum of $53,022.23, due one day after date and bearing interest at the rate of six per cent. from maturity.

Mr. Boling seconded the motion and Edward L. Thomas and Bart S. Adams refusing to vote, the motion was adopted by vote of all the other directors.

The board thereupon adjourned.

EDWARD L. THOMAS, *President.*
HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILLINOIS, *September* 8, 1893.

Office of the Belleville & St. Louis Railway Company.

At a meeting of the board of directors pursuant to a call of the president, there were present, Edward L. Thomas, John T. Taylor and Henry M. Needles.

The president called the meeting to order. The president then reported that he had in his individual capacity, had brought suit against the company on a note of the company whereupon John T. Taylor offered the following resolution. "*Resolved*, That the secretary of the company notify Samuel H. Leathe of the bringing of said suit and inform him that this company will permit him to defend the same in its name if he desires so to do," and moved its adoption.

Being seconded by Mr. Needles, it was unanimously adopted. The president then submitted the following "to the board of directors of the Belleville & St. Louis Railway Company.

GENTLEMEN: As shown by your records, a sale of the property of this company was made March 25, 1893, the consideration for such sale being an agreement to pay the debts of this company by Mr. Samuel H. Leathe. Mr. Leathe conveyed the property to the Belleville City Railway Company, but he has not as yet paid any portion of the debts of this company. The Belleville City Railway Company intends to mortgage said property, and as the debts of this company are due and according to the terms of the sale Mr. Leathe ought to have been paid by him, acting for this company and to protect its creditors, I brought in the name of this company a bill for a vendor's lien which is now pending in the Circuit Court of St. Clair County, Illinois.

Respectfully, EDWARD L. THOMAS.

351 Whereupon Henry M. Needles offered the following resolution:

"Whereas it appears to this board that the president, Edward L. Thomas has instituted a suit for a vendor's lien to protect the creditors of this company and to secure to them the amounts due them,

Be it resolved by this board that the action of the said president in that respect be and the same is hereby approved, and that he be and is hereby directed to push said suit to successful issue" and moved its adoption, and being seconded by John T. Taylor it was unanimously adopted.

The president then presented his resignation as president of said company, which on motion was unanimously accepted. On motion of Edward L. Thomas seconded by Henry M. Needles, John T. Taylor was elected president to fill the vacancy occasioned by the resignation of Edward L. Thomas. There being no further business the meeting adjourned.

JOHN T. TAYLOR, *President.*

HENRY M. NEEDLES, *Secretary.*

Re-examination by Mr. KOERNER:

Q. Mr. Leathe, under the contract of January 24th, Mr. Thomas was to deliver to you, was to put you into possession of the old bonds?

Mr. THOMAS: The contract will speak for itself.

Q. Was the condition that he was to deliver these bonds to you in the First National Bank without doing anything further complied with?

A. No, sir.

Q. That was an additional burden put upon you, Mr. Leathe?

A. That was an additional burden; yes, sir.

Mr. THOMAS:

Q. You knew all about that, Mr. Leathe?

Mr. KOERNER: Have you been sued by the First National Bank for this money?

A. I have.

Q. Mr. Thomas owes that to the bank?

A. Yes, sir.

Q. The suit is pending here in this court?

A. Yes, sir; I will say that I tendered the old bonds to the bank, and they refused to accept them for the reason, as they said, that they had become worthless, become valueless.

Q. Now, there is some talk about the bonds of the Belleville City Railway Company not having been issued as soon as they might have been, was there any reason or any cause for not issuing the bonds before the time that you did?

352 A. None to my knowledge.

Q. Was the road completed?

A. It was not.

Q. Do you think it would have been of any use to place the bonds upon the market until you completed the road?

A. There was no market value for such bonds at that time; they could not have been used in any way, and there was no reason.

Q. Do you remember when they were issued? Do you remember when the mortgage was made?

A. I do not remember the date of it, but I remember the bonds

remained just as they were and there has been no opportunity to use them up to this date, and an attempt to force them upon the market would be suicidal for us to attempt to do that.

Q. Why?

A. Because there is no market for them, there is no value for such bonds, nothing could be done with them; and then the work of the road has not progressed as fast as it would have done if Mr. Thomas had been in accordance with us and with the company and worked with us in the matter; it has hindered the construction of the road, and there is no use in offering the bonds in the present condition of affairs. Bringing suits and threatening to oust men from office and all that sort of thing puts us in a bad shape that we cannot utilize our bonds.

Q. What was the trouble about those meetings of August 9th and during that period?

A. They were antagonistic to the interest of the company, as I understood them; the secretary attended to these things that ought not to be done.

Q. Was there a director or a person claiming to be a director by those parties whom you thought was not entitled to act as such?

A. There was.

Mr. KOERNER: In this letter here to Mr. Charles W. Thomas, of August 5, 1893, you say in speaking about a meeting: "I have named the following day, Wednesday of next week, if you have no engagement on that day which will interfere; please inform me, etc. I will depend upon you notifying our Belleville associates, and I will do the same verbally"; what associates did you refer to?

A. The stockholders.

Q. That was then a meeting of stockholders?

A. Yes, sir.

Mr. KNISPEL: Mr. Leathe, I want to ask you one question, you have stated here in answer to Mr. Koerner that you did not fill out those bonds which you have before testified were issued in the beginning of July of the Belleville City Railway Company be-
353 cause there was no use and no necessity for issuing them; was not there use and necessity for issuing them, and could you not have applied the amount of $25,000 towards covering the indebtedness of the First National Bank of Belleville, and following the contract literally that you had entered into with them?

A. I complied with that obligation by tendering them back the old bonds.

Q. If they were ready on the first of July in the beginning of July?

A. It was not in July at all.

Q. When was it, sir?

A. Well, it was much later than that; I do not know just when, but it was not in July at all, I should say.

Q. Was it before the 27th day of August?

A. I cannot answer that positively.

Q. You cannot?

A. No, sir.

Q. Well, you have not answered before that it was about the be-

ginning of July that you came over and saw the secretary of the company, Mr. Charles W. Thomas, in reference to it; have you not testified to that?

A. I saw Mr. Charles W. Thomas, but that don't fix in my mind when the bonds were issued or when the bonds were completed.

Q. You cannot fix that time?

A. No, sir, I cannot fix that time.

Q. The bonds were dated the 1st of July?

A. The bonds were dated the 1st of July, yes, sir.

Q. Were they not ready and signed in the month of July?

A. That I cannot say; but the bonds were not ready until the mortgage was signed.

Q. Do you know when the mortgage was signed?

A. Well, that was later; considerably later. The mortgage was never turned over to me at all; we had to get up another one.

Q. Who signed that mortgage?

A. The president and secretary.

Q. Who was president?

A. I was president.

Q. Who was secretary?

A. Mr. Charles W. Thomas.

Q. Did not the secretary notify you in the month of July, or before the 11th day of August, that everything was ready?

A. No, sir, he never turned over that mortgage to me.

Q. I asked you now whether he notified you on or before
354 the 11th day of August, or about that time, that the bonds and everything was ready?

A. If he did so state I never knew it.

Q. You never knew it?

A. No, sir, I never saw the mortgage and I never signed it, and I presume that is the reason it was never completed. It was not ready, not executed, and was never turned over to me for executing it. We had to get up another one altogether after that.

B. S. Adams, sworn for the complainant in rebuttal, testifies as follows:

Direct examination by Mr. Koerner:

Q. Were you present at the meeting of the board on the 25th of March, 1893?

A. Yes, sir.

Q. State whether any agreement was made by Mr. Leathe at that time that he would personally pay the debts coming to you and Mr. Thomas?

A. I did not know that there was any agreement made there and then, but I understood from previous talk that I was to get paid for what my father had put in.

Q. That was under the contract of January 24th, was it not?

A. After he got paid back for what he put in, then we was to get our money.

Q. There was no new agreement made on March 25th, was there, changing the existing agreement?

A. Well, there was things brought up and put upon the books of the company.

Q. But outside of that, verbally?

A. Well, I do not remember.

Q. You were interested in that, were you not?

A. I had an attorney there who looked after my affairs.

Q. Did you ever understand or hear of any arrangement either at that time or any other, by which you and Mr. Thomas were to be paid before Mr. Leathe was to be paid?

A. No, sir.

Q. The agreement was that you were to be paid after Leathe was paid?

A. That was the agreement; that was what I understood.

Q. Was there ever such an arrangement to your knowledge?

A. Well, I don't remember; is there any record of it if it is changed?

355 Q. You don't know of it being changed?

A. No, sir, there was talk afterwards in which Mr. Thomas told me that Mr. Thomas gave me to understand that what was spread on the minute book was a new contract, and when Mr. Leathe signed that he did not know what he was signing; that it was a great benefit to us that he signed it.

Mr. THOMAS: Who told you that?

A. You.

Cross-examination.

Cross-examination by Mr. THOMAS:

Q. Now, Mr. Adams, haven't you said a thousand times or more that you knew Mr. Leathe could not tell the truth about anything, that he was an old liar?

(Objected to; objection sustained. To which ruling of the court the defendant by his counsel then and there excepted.)

Q. Do you know his reputation for truth and veracity?

A. Yes, sir.

Q. What is it, good, or bad?

A. Well, I cannot say whether it is good or bad.

Q. Mr. Adams, don't you remember that you and Mr. Taylor were endeavoring to get Mr. Leathe to call a meeting in order to have these bonds issued?

A. I know we wanted him to call a meeting to have the bonds issued.

Q. You tried to get Mr. Leathe to hold a meeting?

A. Yes, sir.

Q. He refused, didn't he?

A. We did not have a meeting.

Q. Did he not decline to do it finally?

A. Well, I know we had some kind of a meeting when I came over here, and after that we had no meeting at all.

Q. You were trying to get him to do that, weren't you?

A. Yes, sir.

Q. You and Mr. Taylor?

A. Yes, sir.

Q. So when he says he was not requested by you and Mr. Taylor and myself to hold a meeting, that is not true, is it?

A. We were trying to hold a meeting, and met several times and tried to get him to issue the bonds.

Q. Mr. Adams, you were present at this meeting. Do you remember what took place?

A. Well, I know a whole lot took place, and it was railroaded through pretty fast.

Q. Don't you know there was a good deal of talking and had been before that?

356 A. Yes, there was lots of talking before, but there was very little at the meeting; everything seemed to be fixed; I relied on you to help yourself through, and you could not leave me out.

Q. Because you was in the same condition I was?

A. Yes, sir.

Q. Now, Mr. Adams, I will ask you, you said that you thought he was carrying out the arrangement of January 24th; did you not testify the other day that Mr. Leathe had refused to execute this contract?

A. I was with you on the day you asked Mr. Leathe if he had signed that.

Q. What did he say?

A. He said he had not.

Q. Did he say he would not?

A. I don't know. I could not positively swear that he said he would not, I know he had not signed it.

Q. Don't you know that at other times he insisting upon me purchasing the Belleville City Railway charter?

A. I think it was Mr. Chipley.

Q. He was present too, was he not?

A. Well, Mr. Leathe was present at some meetings; I don't know all.

Q. Was not Mr. Chipley acting for Mr. Leathe in this matter entirely?

A. Well, Mr. Chipley seemed to be acting.

Q. For Mr. Leathe?

A. Yes, sir.

Q. Mr. Adams, Mr. Leathe says there was no use for issuing the bonds; don't you know that Mr. Leathe had agreed to give you and myself and Mr. Taylor, eighteen thousand dollars of those bonds?

A. Yes, sir.

Q. Don't you know that he had agreed to give you and Mr. Taylor $2,500 of them?

A. Yes, sir.

Q. Don't you know that you and Mr. Taylor and I were trying to get him to issue them so we could get our bonds out of it?

A. Yes, sir.

—. Where was that use of issuing them to give us our bonds?

A. To give us our bonds, yes, sir.

Q. Don't you know also that he was to give $25,000 of bonds for some land that he bought of my wife?

A. I knew he was to give some bonds somewhere about that.

357 Q. Were you not present when I made a demand upon him for them?

A. Yes, sir.

Q. He refused to give them?

A. Yes, sir.

Mr. KOERNER: He said they were not executed, not ready.

Mr. THOMAS: Did I not say he had plenty of time to get them ready?

A. Yes, sir.

Q. And I asked him if he would give them to me when they were issued, and he said he would not answer that question?

A. Well, I do not remember all the details of it.

Q. Is not that about it?

A. I could not say as to the last.

Q. He refused to give them to me?

A. Yes, sir, I know that.

Q. Did not you and Mr. Taylor want to bring suit against Mr. Leathe, if I did?

A. We wanted to sue, yes, sir.

Q. Long before I did?

A. Well, you persuaded us not to.

Q. Did not I tell you to wait awhile and see if we could not arrange matters?

A. Yes, sir.

Re-examination by Mr. KOERNER:

Q. Do you remember when that was when those bonds were demanded by Mr. Thomas?

A. I do not remember the date, but I know Mr. Thomas got me to go with him and be present when he demanded them.

Q. Well, it was before the mortgage was executed, was it not?

A. I don't know when it was executed.

Q. About what time was this conversation?

A. Some place around July.

Q. July of this year?

A. I am not positive as to the date.

Q. July or August?

A. Somewhere around there.

Q. Now when these meetings were called was not the purpose to oust Mr. Chipley?

A. Well, we had that in mind.

358 SAMUEL LEATHE, sworn for the complainants, testified as follows:

Direct examination by Mr. KOERNER:

Q. You are a son of Samuel H. Leathe?
A. Yes, sir.
Q. Are you secretary of this Railway Company?
A. Yes, sir.
Q. Were you present at the meeting, on the 25th of March, of these two Railroad Companies?
A. Yes, sir.
Q. It was stated here that the agreement was verbally made by your father; that he agreed to pay the then existing debts of the Belleville & St. Louis Railway Company; was there anything of that kind said in your hearing?
A. I don't recollect of ever hearing anything of that sort.
Q. Well, were you enough interested in the matter to have heard it if that had been said?
A. I should think I should have heard it. I should have remembered it.
Q. It was not, then, said in your presence, as far as you remember it?
A. No, sir.
Q. Not in your hearing?
A. No, sir.
Q. You were there during that meeting, were you?
A. I was there all the time.

Cross-examination.

Cross-examination by Mr. THOMAS:

Q. Did you go to the Recorder's office two or three times to record deeds?
A. I went to the Recorder's office twice at one meeting; now, I can not recall whether it was that meeting or the meeting after that. I was here, I think, at both meetings.
Q. You went up to the Recorder's office to record deeds that were made that day, didn't you?
A. Twice I went there.
Q. How long were you gone, about fifteen minutes at a time?
A. Yes, sir, about that; as long as it would take to walk there and back.
Q. And you went out several times?
A. A couple times, yes, sir.
359 Q. Then, of course, there was a good deal of conversation that you did not hear at all, was there not?
A. I do not remember, now, whether it was at that meeting or some other.
Q. It was the day those deeds were made?
A. Well, I took the deeds out and took them to the Recorder's office.

Q. You do not know what occurred while you were absent; something of that kind might have been said and you would not have heard it while you were absent, would you?

A. I did not say it was not said; I said I did not hear it said.

Complainants then offered in evidence the files in the Chancery case of the Belleville & St. Louis Railway Company *v.* Belleville City Ry. Co. *et al.*, also proved that said case had been dismissed by complainant therein after the hearing of this cause had commenced and proceeded to nearly its close.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

To the Honorable Judge of said Court, in Chancery sitting:

The complainant, the "Belleville and St. Louis Railway Company respectfully shows unto your Honor that it is a railway corporation duly incorporated under the general laws of the State of Illinois, having its principal office at Belleville, in said county and state.

That on the 25th day of March, A. D. 1893, it was the owner in fee and of rights of way extending from the western end of the Survey 102 of Cahokia Common Fields, in said county and state, to the western line of the south-west quarter of section 11, township 1 north, range 9 west, in said county, with grading and culverts to the eastern line of the land owned by Madison T. Stookey, and into the land of Frederick Tilling, situated in the south-west quarter of section 20, T. 1 N., R. 8 W., in said county, with certain contracts for right of way which it had obtained from landowners, and on which it had graded its road-bed.

Your orator further shows that it had expended large sums of money in procuring said rights of way, in grading its said roadway, and had become indebted to divers persons in large sums of money, amounting in the aggregate to the sum of $71,876.75 which it owed, with interest thereon, and which, with interest, aggregated
360 on the 21st day of August, A. D. 1893, to the sum of $80,484.88 *dollars*, for which on that day it executed to its creditors its promissory notes for said amounts due one day after date. That said notes are now due and unpaid, and that the holder of one, amounting to the sum of $53,022.23 has brought suit against your orator thereon.

Your orator further shows that, by deed dated March 25, A. D. 1893, it conveyed all of its said property to one, Samuel H. Leathe, for the consideration, as stated in said deed, of $1 and other valuable considerations, a copy of which deed is marked Exhibit "A" to this bill, filed herewith and made a part hereof; that said other valuable considerations was the agreement then made between your orator and said Samuel H. Leathe that he, the said Samuel H. Leathe, was to pay the indebtedness of your orator, which was then and there fully known to him, the said Leathe, by state-

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ments then before rendered to said Leathe by the said creditors of your orator, and which indebtedness was, as hereinbefore stated, settled by your orator, and its notes given therefor as aforesaid. Your orator further says that at the same time and place, and on the said 25th day of March, A. D. 1893, the said Leathe, in pursuance of an arrangement then made, transferred said rights of way, grading, etc., so deeded to him to the Belleville City Railway Company, a railway corporation organized under the laws of the State of Illinois, and having its principal office in the city of Belleville, Illinois. That at the time of the conveyance as aforesaid the said Belleville City Railway Company well knew the fact that said Leathe had not paid the purchase money for said property, but that the same *are* still due and unpaid, and that it, the said Belleville City Railway Company, at the time of conveyance as aforesaid, well knew all of the facts attending said transactions, and had full and complete knowledge thereof, and had full notice of the rights of your orator, and that said indebtedness was the consideration for said deed, and that the same was not paid by said Leathe when the conveyance was made to it by said Leathe.

That said Belleville City Railway Company well knew, before and at the time of the conveyance of the said property to said Leathe, and before and at the time of the conveyance to it by said Leathe, the full nature *of* the indebtedness of the said Belleville and St. Louis Railway Company, how said indebtedness was incurred, and that the property conveyed was obtained by your orator, and the grading done by the creation of said indebtedness, and that the same was unpaid.

That the matters herein set forth were discussed and agreed upon in the presence of the officers of the said Belleville City Railway Company and in the presence of all its stockholders, and at a meeting of its directors and stockholders then held.

Your orator further shows that said indebtedness nor
361 any part thereof has not been paid by said Leathe, nor by said Belleville City Railway Company, although the same is now due and payable. Your orator further shows that the said Belleville City Railway Company is about to issue bonds and execute a mortgage to secure the same which will prevent your orator from realizing from its property the amount due it, and will so incumber it as to make it valueless to your orator. In consideration of the premises, and inasmuch as your orator can only have an adequate remedy in equity, your orator presents this, its bill in equity, and makes the Belleville City Railway defendant hereto, and prays that it may be summoned to answer the same, and upon a final hearing thereof your Honor will determine the amount due your orator, and in default of payment by said defendant that it will order the premises conveyed by said deed to be sold and the proceeds thereof applied to the payment of amount due to your orator, and that your Honor will declare a vendor's lien thereon in favor of your orator, and will grant such other and further relief as the nature of the case may justly require, and as to equity and

justice may seem meet and proper, as in duty bound your orator will ever pray, etc.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By EDWARD L. THOMAS,
Its Solicitor.

Filed September 6, 1893.
THOMAS MAY, JR.,
Circuit Clerk of St. Clair Co., Ill.

EXHIBIT "A" TO BILL.

Copy of Deed Recorded in Book 224, Page 192.

The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, and State of Missouri, and of other valuable considerations to it from him moving, hereby grants bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land, situate in the county of St. Clair, and State of Illinois: All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed, dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof. Also all the rights of way, easements, grading and superstructures thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis.

And the grantor covenants and agrees to and with the said Leathe, that it will, upon demand, convey by a good and proper deed of conveyance, to the said Leathe or his assigns any
362 land, easements, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART. S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public, in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument for the uses and purposes therein set forth as president of said company, that he is president of said company and executed said deed as president by order of the stockholders of said company, whose names are subscribed thereto, also that said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of the stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

[NOTARIAL SEAL.] A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock, P. M.

363 STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, 1893.

THE BELLEVILLE CITY RAILWAY COMPANY
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Answer of the Defendant.

Now comes the defendant, and for answer to the allegations of the complaint, says:

That the Belleville & St. Louis Railway Company was formed as a corporation by virtue of the laws of the State of Illinois.

The said company had acquired some rights of way and contracts for rights of way, and had done some grading along the route of the railroad intended to be built by it, and some money had been expended therefor, which had been furnished by Edward L. Thomas and one W. A. Adams, now deceased.

That prior to the time of the making of the deed by the Belleville & St. Louis Railway Company to the Belleville City Railway Company, to wit: on the 24th day of January, A. D. 1893, the said Edward L. Thomas, who was the chief promoter and nominal owner of nearly all of the stock of the said Belleville & St. Louis Railway Company, the stock of said corporation, according to its records, then standing as follows:

Edward L. Thomas	4,856	shares
Bart. S. Adams	62	"
John T. Taylor	50	"
Henry M. Needles	21	"
Alpheus Boling	1	"
Josephine Johnson	10	"
	5,000	"

And Bart S. Adams made an agreement in writing with one Samuel H. Leathe, in words and figures as follows:

ST. LOUIS, *January* 4, 1893.

It is agreed that we will transfer to Samuel H. Leathe $255,329,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

364 Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 of 5% bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe, to hold until other bonds are issued. He to advance amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750, with interest, in St. Louis.

Same proportion of stock to be maintained in coal and other companies organized to carry out the project as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas.

Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000 and John T. Taylor $12,700. Each party to receive back amounts advanced to the enterprise, as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amounts to be advanced by him, and balance to go into the treasury of the railway company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.
BART. S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the statements made in my letter to him of January 12th, 1893, and as security, to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.

This defendant shows unto your Honor that at that time the condition of the enterprise was desperate, and unless pecuniary assistance

could be procured, all moneys therein invested by the said Thomas and Adams, and the creditors of said corporations would be lost.

Under the said agreement it was intended that from the proceeds of the bonds to be issued, the contemplated railroad should be built and equipped, and all moneys advanced by said Leathe to that end should first be repaid, and then the legitimate obligations incurred by the corporation theretofore should be adjusted.

Your defendant further shows that under said agreement,
365 the said Leathe became the holder in equity of more than 50% of the stock of said corporation, and he and the said Chipley became the holders together of a fraction less than two-thirds of said capital stock.

This defendant further answering, says that subsequent to said agreement, it was determined by all the parties interested therein, to acquire the charter of the Belleville City Railway Company, a charter granted by the General Assembly of the State of Illinois, and to construct and operate the proposed railroad under the provisions of said last-named charter, and such charter was acquired, the parties to said agreement retaining the same interest they held under the original agreement, except that the said Edward L. Thomas was to and did transfer to Charles W. Thomas, who controlled said charter, certain of his holdings of stock in consideration of his transfer of the capital stock of the said corporation to the holders of the stock of the said Belleville & St. Louis Railway Company.

In order to complete the transactions and vest the legal title of property held by the said Belleville & St. Louis Railway Company in said defendant, the transfer shown by the bill, first to Samuel H. Leathe, and then from him to this defendant, were made on the same day. This defendant distinctly denies that there was any agreement made between said Leathe, and said Belleville & St. Louis Railway Company, or the Belleville City Railway Company, that the said Leathe should pay the existing indebtedness of the Belleville & St. Louis Railway Company.

And this defendant in further explanation of this transaction, distinctly states as a matter of fact that there was no transaction of barter and sale between the said companies and said S. H. Leathe; that it was not intended nor was the legal effect of the deeds of conveyance to create an indebtedness from the said Leathe to the said Belleville & St. Louis Railway Company, or from the said Belleville City Railway Company, to the said Leathe, or from the said Belleville City Railway Company to the said Belleville & St. Louis Railway Company, but the intention and purpose controlling all parties in the transaction was to simply change from the organization of the Belleville & St. Louis Railway Company, to that of the Belleville City Railway Company, and thereby terminate and wipe out the corporation known as the Belleville & St. Louis Railway Company.

And this defendant distinctly states that the Belleville City Railway Company is in no manner indebted to the Belleville & St. Louis Railway Company.

This defendant further states that the notes mentioned in said bill as made by the Belleville & St. Louis Railway Company to its

creditors, and particularly the one pretended to have been made to Edward L. Thomas, who had brought suit upon the same as
366 alleged in said bills, were made after the agreement herein set forth, made in January 24, 1893, and after the deeds of transfer of March 25th 1893, to wit: in August 1893.

That at the time the notes were made, any indebtedness which might have existed from said Belleville & St. Louis Railway Company to Edward L. Thomas was payable only in manner provided in said agreement.

The parties holding over two thirds of the stock of said Railroad Company were not represented, and none of the so-called Directors who were at the time of the making of said notes acting as such, have any substantial interest in the capital stock of said incorporation, which had as before stated, in fact ceased to exist; and all the capital stock heretofore held by said Edward L. Thomas, which had not been agreed to be transferred by said agreement, was thereby pledged to Samuel H. Leathe. Therefore your orator distinctly alleges that said note made to Edward L. Thomas upon which he brought suit against the Belleville & St. Louis Railway Company was collusively and fraudulently made, and without right or power of the corporation to make it, and is fraudulent and void.

And having fully answered, the defendant prays to be discharged hence without day, &c.

G. A. KOERNER,
Sol. for Defendant.

STATE OF ILLINOIS, *County of St. Clair, ss:*

Samuel H. Leathe, being first duly sworn, on his oath says that he is the President of the Belleville City Railway Company, and that the above answer is true in substance and in fact.

SAMUEL H. LEATHE.

Subscribed and sworn to before me this 6th day of November, 1893.

[Seal of St. Clair County, Illinois.]

THOMAS MAY, JR.,
Circuit Clerk.

Filed Nov. 6th, 1893.
THOMAS MAY, JR.,
Circuit Clerk.

367 CHARLES W. THOMAS, sworn for the defendants in rebuttal, testified as follows:

Examined by Mr. E. L. THOMAS:

Q. I will ask you, Mr. Thomas, if you remember the endeavors that were made to get a meeting of the board of directors of the Belleville City Railway Company last summer?

(Objected to.)

A. I do.

Q. What was done?

A. Well, there was a great deal done; I saw Mr. Leathe myself several times in regard to holding a meeting of the directors, and at length Mr. Leathe called on me to give notice of a meeting, and I did so.

Q. That was pursuant to the letter of August 5th?

A. Yes, sir.

Q. What was that to be?

A. A meeting of the directors. Mr. Leathe had no power to call any other.

Q. Did you have a conversation with Mr. Leathe about what was to be done at that meeting?

A. Yes, sir.

Q. When was that?

A. I think that was on Monday morning; previous to that Mr. Leathe was in my office, I had been to see him on Saturday before about one o'clock on the corner of Market and Fourth streets, I met him and explained to him the purpose of the meeting and that I had some resolutions setting out the actions the board ought to take; and he said that was all right, he would come over and examine them; he appeared at my office on Monday morning and examined the proposed action.

Q. Did he examine the action that was taken on August 11?

A. Yes, sir.

Q. In this book?

A. Yes, sir.

Q. Did he appear at the meeting?

A. No, he did not appear; at that time Mr. Leathe was not present when the first meeting was held.

Q. Now, then, I want to ask you whether at any time before the meeting of August 11th, you notified him that the mortgage was ready to execute; that it had been prepared?

A. I wrote him a letter, yes, sir.

368 Q. When was that letter written?

A. I do not remember.

Q. See if that is it? (Showing witness a letter book.)

AUGUST 11, 1893.

Mr. Samuel H. Leathe, President:

The board held a meeting in pursuance of the last adjournment at 10 o'clock this morning. Nothing was done which was not in accordance with your understanding of the purpose of the meeting as expressed to me, and nothing which will not meet with your approval according to my understanding of your wishes and plans. The following resolutions were passed. One approving the acts of the president and secretary so far done with reference to the bonds and mortgage; one directing the president and secretary to execute the mortgage and deliver the same with the bonds to the St. Louis Trust Co. to be dealt with as agreed between that company and this; one directing the treasurer to procure the bonds from the Trust Company and turn them over to Samuel H. Leathe; one directing

payment of $1,500 to Mr. E. C. Rice as previously agreed; one allowing me $500 which applied to payment of five shares of stock, and one directing the president and secretary to issue certificates of stock to the stockholders of record. Under the charter of this company the corporate powers are vested in the board, and there being no doubt in my mind of the entire regularity of these proceedings I am ready at any time to comply with the directions of the board which seem to me to be entirely reasonable. I await notice from you as to the time when you desire me to act with you.

Board adjourned to Aug. 21, 10 A. M.

CHARLES W. THOMAS, *Secretary.*

A. I wrote Mr. Leathe on that same day on the 11th day of August that I was ready to comply with the direction of the board which seemed to be entirely reasonable, and I waited to hear from him when he desired to act with me.

Q. I will ask you if that time the bonds had been prepared?

A. The bonds had been signed, I think, by Mr. Leathe and myself in St. Louis prior to that time.

Q. What is the date of that letter?

A. August 11th.

Q. And you had prepared the mortgage?

A. Yes, sir, I had prepared the mortgage and had it printed; a copy was submitted to the trustees and turned over to me and we agreed upon form; a copy had been left with the trustees and everything had been agreed upon and it seemed to be satisfactory to him.

369 Q. Did he execute the mortgage with you?

A. No, sir.

Q. Well, did he say why he did not do it?

A. No, sir, he never told me why.

Q. Now, Mr. Thomas, were you present at the meeting of March 25th?

A. I was secretary of the company at that time and was present at the meeting.

Q. What was the consideration for the deed from the Belleville & St. Louis Railway Company to Samuel H. Leathe?

(Objected to, objection sustained; to which ruling of the court defendant at the time excepted.)

The COURT: He explained that fully when he was on the stand before.

In witness whereof I hereunto set my hand and seal this 23d day of February, A. D. 1894.

A. S. WILDERMAN, *Judge.*

Filed February 23d, 1894.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the order of court entered at the September term A. D. 1893, in said cause.

SAMUEL H. LEATHE, THE BELLEVILLE & ST. LOUIS RAILWAY CO. and THE BELLEVILLE CITY RAILWAY COMPANY

vs.

EDWARD L. THOMAS.

Injunction, &c.

On the 28th day of November, A. D. 1893, come the parties by their respective solicitors, and this cause is heard on the pleadings and evidence, and the further hearing of this cause is postponed until December 13th, 1893. On the 13th day of December, 1893, come again the parties by their solicitors and the trial of this cause is resumed and the trial progresses, and now on the 21st day of December, 1893, the court after hearing the evidence and arguments takes this cause under advisement to be decided as of this date.

Be it remembered that the following is a true and correct copy of the order of court entered at the January term, A. D. 1894, in said cause.

370 SAMUEL H. LEATHE, THE BELLEVILLE & ST. LOUIS R'Y CO. & THE BELLEVILLE CITY R'Y CO.

vs.

EDWARD L. THOMAS.

Injunction.

On the 12th day of February, A. D. 1894, come the parties by their respective solicitors, and the court after hearing the evidence and arguments of counsel on the 21st day of December, 1893, and being fully advised of and concerning the premises, orders, adjudges and decrees that the bill in this cause be dismissed, said order and decree to take effect as of December 21st, 1893. It is further ordered that complainants pay the costs of this suit and that execution issue therefor. And afterwards the court grants time to complainants to file a certificate of evidence by March 15th, 1894.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court in and for said county in the state aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of: 1. The bill and Exhibits A, B, C and D. 2. Defendant's answer. 3. Exhibit I to answer. 4. Complainant's replication. 5. Certificate of evidence. 6. The order of court of the September term, 1893. 7. The order of court of the January term, 1894, in the case of Samuel H. Leathe *et al. vs.* Edw. L. Thomas, as the same appears of record and on file in my office, the same being a complete record in said cause.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at my office in Belleville, this 31st day of January, A. D. 1895.

[Seal of St. Clair County, Illinois.]

THOMAS MAY, JR., *Clerk*,
By PHIL. H. SOPP, *Dep'ty*.

371 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Alonzo S. Wilderman, one of the Judges of the Third Judicial Circuit of the State of Illinois, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, Clerk of the Circuit Court of St. Clair County aforesaid, (which county is in said Judicial Circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere; and that his attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 31st day of January, A. D. 1898.

A. S. WILDERMAN. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court, in and for said county in the state aforesaid, do hereby certify that Alonzo S. Wilderman whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, one of the Judges of the Third Judicial Circuit of the State of Illinois (of which Judicial Circuit the said St. Clair County forms a part), duly commissioned and qualified, that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Belleville, this 31st day of January, A. D. 1898.

[SEAL.]

THOMAS MAY, JR., *Clerk*,
By PHIL. H. SOPP, *Dep-ty*.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court in and for said county in the State aforesaid do hereby certify the foregoing to be a true, perfect and complete copy of the record in the case of Samuel H. Leathe *et al. vs.* Edward L. Thomas, certified to by the clerk of the St. Clair County Circuit Court on the 31st day of January 1895.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Belleville this 16th day of June A. D. 1898.

[SEAL.]

THOMAS MAY, JR., *Clerk*,
By PHIL. H. SOPP, *Dep-ty*.

372 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the April Term, A. D. 1900.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Deposition of John M. Holmes and Bart S. Adams, before Referee W. Weir, taken in the office of John M. Holmes, Union Trust Building, St. Louis, Mo., May 21st, 1900.

JOHN M. HOLMES, being duly sworn, deposed as follows:

(By EDWARD L. THOMAS:)

Q. Your name is John M. Holmes?
A. Yes, sir.
Q. Where do you reside?
A. St. Louis, Mo.
Q. What is your business, Mr. Holmes?
A. Lawyer.
Q. What connection had you with the Adams estate and its affairs and with the Belleville and Southern Railway Company—St. Louis, Belleville and Southern Railway company—and the Crown Coal and Tow Company?
A. I was their attorney as long as it had any connection with it, and am still.
Q. Did you receive any money for them upon any account connected with either one of these companies, about either in November or December 1895?

373 A. Yes, sir.
Q. What was that?
A. Ten thousand dollars.
Q. What for?
A. I think that would be a little hard to explain. The point was this, and if I can give you the facts you can deduce for yourself. The point was, we had ten thousand dollars' worth of bonds in the Coal and Tow Company—when I say "we" I mean the Adams estate—and a sale was made which would include all of the bonds of that Company and all of the bonds of the Railroad Company at the same time. When that sale was made Mr. Leathe wanted those ten thousand dollars in bonds which we had, and we declined to surrender them until we got ten thousand dollars in money. Mr. Leathe then wanted me to make the receipt, the exact form of which I have forgotten, but I think you have it on file, and I made the receipt that way.
Q. But that money was paid to you for what, that is the point actually?

A. I think I have given you the exact facts. I wasn't going to surrender the bonds until I got the money, and when I got the money, I surrendered the bonds and gave the receipt as I said.

Q. Now, I see an item paid to the Adams estate on the 4th day of March, 1899, nine thousand, nine hundred and forty four dollars. What was that?

A. That I presume—I have forgotten the sum—it was sometime last Spring—that was paid under these circumstances: Mr. Leathe wanted the estate to join in a bill for an accounting in the Federal Court of Illinois. The point was that there was to be no jurisdiction there of any suit which would embrace them all unless we would come in as volunteer. We had at that time an accounting suit pending against him here, and preferred to go, if possible, into an accounting in which all parties connected could be joined. We had also pending against him a suit which we claimed did not come into the accounting, a suit for Eleven Thousand Dollars which
374 was due for tugs and barges which, as we contended, we had sold to him. His issue was that they had been put into the enterprise. That was the issue between us. So I made an arrangement that we would join in the suit for a certain proportion of that suit and an arrangement as to the rest of it.

Q. The fact is, then, that he has settled with you in regard to that one specific item—the entire item is settled?

A. No, sir, that much was paid on the item. We figured the item to see what it would amount to with interest. He was to pay two thirds and the other third was to stay in—it is hard to say it is settled—I am quoting that from memory, but I think it is correct.

Q. But that was a claim connected wholly with the Crown Coal and Tow Company, wasn't it?

A. Yes, sir.

Cross-examination.

(Mr. G. A. KOERNER:)

Q. Mr. Holmes, Mr. Leathe paid you Ten thousand dollars of which you have first spoken—you stated that you gave a receipt?

A. Yes, sir.

Q. That correctly embodied the transaction—you signed the receipt?

A. I signed the receipt, yes, sir. I will say this, that at that time the idea of there being any severance between the two enterprises in any way, shape or form had not been urged as far as I know. At any rate it was not present in my mind, and I had supposed at that time there was going to be a speedy settlement of the whole matter. I gave him a receipt for ten thousand dollars on account.

Q. Mr. Leathe was willing to pay it on the account of what was coming to the Adams out of both——

A. I don't know what he paid it out of. He was willing to pay the ten thousand dollars, provided he got the ten thousand in bonds, and I executed the receipt, got the bonds and the transaction was closed.

375 Q. That receipt then expressed the account upon which you received—upon which he paid out the money?

A. I have no doubt it did.

Q. As you and he then understood it?

A. Yes, sir, as we then understood it.

Q. As to the other transaction, Mr. Leathe and the Adams, as represented by you, determined to bring suit in the United States Court of Illinois?

A. Yes, sir, Southern District of Illinois.

Q. You thought there stood in the way of that perhaps the claim for Eleven Thousand Dollars for tugs and barges which was being urged by the Adams estate against Leathe?

A. Yes, sir.

Q. And that was adjusted in the manner you have stated?

A. Our connection with that—or our contention was that that had nothing to do with the accounting, and I wanted that settled clearly outside before I gave any receipt.

Q. Mr. Leathe claimed it was a charge against the company and not against him?

A. Yes, sir.

Q. That is to say, that it was a part of the assets of the company contributed by the Adams?

A. Yes, sir. Our contention was that he bought them individually and contributed them himself. That was the issue between us.

Q. You know that the tugs and barges actually did come to the Crown Coal and Tow Company?

A. Yes, sir, exactly.

Re-examination.

(Mr. THOMAS:)

Q. When you speak of the receipt, Mr. Holmes, didn't you at that time consider or didn't you transfer only to Mr. Leathe the bonds or——

376 A. No, Mr. Thomas, the transaction was this. I say I was making no discrimination whatever at that time, and at that time the relations were friendly all the way through. I had no idea of any trouble coming. We had these ten thousand dollars in bonds—in point of fact I didn't know just how the sale had been transacted, as far as that is concerned, (as I at present recall, I didn't know at that time) and when he wanted these bonds to be delivered I said I wanted payment equal to the face of those bonds or I would hold the bonds.

Q. Those were the bonds of the Cown Coal and Tow Company?

A. Yes, sir.

Q. Which Mr. Adams had acquired for his interest in the old Crown mines, hadn't he?

A. Yes, sir.

Signature waived.

BART S. ADAMS, being duly sworn deposed as follows:

(Mr. THOMAS:)

Q. What is your name?
A. Bart S. Adams.
Q. Where do you live?
A. St. Louis County.
Q. Are you the Bart S. Adams spoken of in the transactions relating to the Crown Coal and Tow Company and the St. Louis, Belleville and Southern and Belleville City Railway?
A. Yes, sir.
Q. Mr. Adams, do you remember at a meeting of March 25th, 1893, anything regarding who was to carry on the coal business in St. Louis, who was to superintend—to attend to it?
A. Yes, sir.
Q. Who was that?
A. John T. Taylor and myself.
377 Q. Do you remember anything as to whether there was a compensation to be paid to anybody connected with the Company excepting you and Mr. Taylor?
A. Nobody was to receive any salary, except the clerk.
Q. Now, Mr. Adams, how long did you continue at that time in the employment of the company?
A. Well, I couldn't say.
Q You remember whether—let me direct your attention to a thing about it—was there anything about the discharge of Mr. Taylor in May '93 which would refresh your memory?
A. Yes, sir, I know I resigned—I don't know what date—and Taylor was discharged—at that time about.
Q. Who controlled the company from that time on?
A. Well, Mr. Chipley had a very active control, and he hired some others.
Q. Who controlled Mr. Chipley, anybody?
A. Why, Mr. Leathe.
Q. When was Mr. Chipley displaced?
A. At a meeting in Belleville, I don't know the date.
Q. That same year?
A. I think it was.
Q. Who controlled it after that?
A. Mr. Leathe was always the head.
Q. What was the nature of the control he exercised?
A. We all had to take orders from Mr. Leathe.
Q. Do you know anything about the litigation that arose in 1893 in August—were you present?
A. Had some injunction suits.
Q. Who brought them—what I want to know is whether you had any conversation with Leathe regarding the litigation just prior to that, you and Mr. Taylor?
378 A. Well, I can't recall those things. I know there was a heap of litigation.

Q. Was there anything said by Mr. Leathe about litigation to you and Mr. Taylor at that time—before this litigation commenced?

A. If I knew just the nature of the litigation, why, I probably——

Q. You remember that this injunction suit was brought by Mr. Leathe. You were over there before Judge Wilderman in chambers on the hearing of the first injunction?

A. I know there was some kind of injunction.

Q. Was there anything said by Mr. Leathe to you and Mr. Taylor about his intention to litigate?

A. Well, Mr. Leathe having the majority or control of the stock, why he wanted his men——

Q. I know, but was there anything said—did he say anything to you about litigating, or that he would litigate—about your not having any money to litigate—I want to direct your attention to a certain——

A. I don't remember that particularly, but I remember Leathe said he was going to run the Company.

Q. That was the time that he——

A. Yes, sir.

Q. Now, what part after March or in May, '93, did Edward L. Thomas take in the management, control, advising or anything connected with the companies?

A. I think he refused to act or vote or something, I don't remember just exactly.

Q. I want to ask you, Mr. Adams, if you were present at the time of the sale of the property by Mr. Leathe?

A. At the St. Nicholas Hotel?

Q. Yes, sir.

A. Yes, sir, I was present there. I suppose the sale had already been made. I was there to sign papers.

Q. Was that a meeting of the Board of Directors called regularly or by anybody?

A. Not that I know. I was told to be at the St. Nicholas
379 by a certain time, that the Company was going to be sold.

Q. State what you know about the price that was going to be obtained for it at that time.

A. Well, at that time I didn't know.

Q. When did you first learn the price that had been paid?

A Well I suppose I heard it from Chipley, probably first, but it wasn't anything like the price that was obtained for it.

Q. But when did you first hear it?

A. Why, I think in the corridor of the Security Building either that day or the day after.

Q. That was after the sale?

A. Yes, sir.

Q. That was the first time you knew the price at all that had been obtained for the property?

A. Yes, sir.

Q. There was no consultation with you, was there, as regards the price of the property before the sale?

A. There wasn't any.

Q. Were you one of the Directors at that time?
A. Yes, sir, Mr. Leathe had control of my stock, I believe.
Q. Well, did Mr. Leathe have control of any of your interests except your stock at that time?
A. No, sir.
Q. And you were not consulted as to the sale, as to the amount or anything, didn't know it until afterwards?
A. No, sir.
Q. Now, M. Adams, what endeavors, if any, after the sale you made to obtain a settlement with Mr. Leathe, you or your attorney?
A. My attorney tried to——
Mr. KOERNER: Never mind what your attorney did!
Q. Well, did you at any time go with Mr. Taylor to Mr. Leathe to see about a settlement?
A. Why, I couldn't recall it exactly, but I supose I had
380 talked with Mr. Taylor, to Mr. Leathe to get our money, but that was all in our attorney's hands.
Q. I want to ask you now if you know the different steamers upon the river to whom coal was sold by the Crown Coal and Tow Company. Can you state whether or not, in your opinion, and you—you were acquainted with all the steamers, were you not?
A. Yes, sir
Q. And the methods of collection and so forth?
A. Yes, sir.
Q. State whether or not in your opinion, a bill against the steamers was collectable against any one of those steamers.
A. I know I have always tried to sell coal to the best, and where it was not, I collected cash.
Q. Well those bills outstanding, were they collectable or not?
A. They were—if I could see a list of the steamers I could——
Q. (Examining papers:) I thought it was in here, but I see you haven't got it. It is in your accounts but not in this printed account. A claim against the City of St. Louis, Mr. Adams, could be collected?
A. Yes, sir.
Q. Against yourself?
A. Yes, sir.
Q. Against *M.* M. Chipley at that time?
A. Well he paid his debt after he got his money.
Q. Do you know how much money he got?
A. Why, according to him, several million.
Q. I know, but do you know how much he did get?
A. Well, from his bank book I understood he had close on to Eighty Five Thousand Dollars deposited in the bank.

(Mr. KOERNER:)

Q. When was that?
A. Well, how I found it out, he went up to Kennard's after the sale of the Company and bought a lot of stuff, and they wouldn't send it out without him paying for it, and he came over and produced his bank book.

381 (Mr. KOERNER:)

Q. You saw his bank book?

A. I didn't see it, no, sir. He told me, though, he had several million dollars that he could loan out.

(Mr. THOMAS:)

Q. One thing I have forgotten, what arrangement, if any, was ever made as to compensation to Mr. Leathe for anything? Between yourself and——

A. I never knew that Mr. Leathe was to get any salary.

Cross-examination.

(Mr. KOERNER:)

Q. As a matter of fact, Mr. Leathe did never get any salary from either of the companies, did he?

A. I didn't keep the books and don't know.

Q. Did you get a salary while you were working for them?

A. I did.

Q. Mr. Taylor got a salary?

A. I understood he did.

Q. You know he did?

A. No more than I know that Mr. Chipley deposited so much money in the bank.

Q. Well Taylor told you, did't he?

A. Well, the man that saw Chipley's bank book——

Q. You know from Mr. Taylor that he drew a salary while working for the Company?

A. Well, he was supposed to, I didn't pay him.

Q. You were general manager of the Company?

A. Yes, sir.

Q. You drew a salary as such?

A. Yes, sir.

Q. Mr. Chipley was the president, wasnt' he?

A. Yes, sir.

Q. And in active control of the operations of the Company as you have stated?

A. He was for a while.

382 *A. He was for a while.*

Q. While he was president?

A. Well, I expect he was. I couldn't tell much about Chipley.

Q. Now from what steamboat to whom coal was sold was any money due to the Company for coal that you know of?

A. I couldn't say unless you show me where——

Q. As a matter of fact you don't know that Mr. Chipley was solvent before his death, do you?

A. Well, yes, I do.

Q. Well, at what time, how late?

A. And is yet, his estate.

Q. How late, what time did he become solvent. Was he solvent at the beginning of the year '95?

A. He was solvent shortly after the sale of the Crown Coal and Tow Company and the railroads.

Q. That was in November, '95?

A. If that is the proper date.

Q. You think after that time you could have collected from him?

A. Yes, sir, I know a short time after that it was.

Q. Well, before that time it couldn't be done, could it?

A. Well, people had collected bills from him before that time.

Q. Oh, yes, of course people collected bills, but you didn't consider that he was solvent before that time?

A. Well, he made money. Mr. Leathe and myself paid him considerable money prior to that time.

Q. But he was execution proof, was he not?

A. Well, I never looked up his real estate.

Q. Well, you don't know whether he was solvent or not—before the time he got his money?

A. Oh, all I know I expect he was solvent if he wanted to be.

Q. Now, that litigation that you spoke of in August, 1893, was occasioned by the fact of one Waddock, acting as a Director, wasn't it?

A. Well, I couldn't just say. I know he was acting as a Director when the company first——

383 Q. You know that Mr. Waddock had no substantial interest in the company ?

A. I understood that he did not.

Q. And Mr. Leathe said that he, having the majority of the stock, wanted something to say about running the Company. That is what Mr. Leathe told you?

A. Oh, yes, he told me that. I suppose Waddock was as substantial as Chipley.

Q. Well, but Waddock was acting against him?

A. Waddock was in with me, and he acted with me, I suppose.

Q. As against Mr. Leathe at that time?

A. Yes, sir.

Q. Mr. Leathe said to you, he wanted control — the company as he owned the majority of the stock.

A. Yes, sir.

Q. In fact he put in all the money except the money originally put in by your father, had he not?

A. Yes, sir, was to put it in.

Q. Was to and did?

A. Well, he put it in by degrees as he went along.

Q. Well, even at that time, August 1893, he had expended a great deal of money, hadn't he?

A. I couldn't say how much. I wasn't familiar with the transaction at all.

Q. You know that he had purchased a great deal of coal lands at that time?

A. Yes, sir, I—I understood he had. I never had access to any of the Company's books or things.

Q. You knew that he had purchased steamboats?

A. I knew that he purchased some steamboats from myself and from the Griffiths.

Q. You knew that he had taken up a number of bonds which were in the Third National Bank, in other hands here?

A. Not many, seven hundred and fifty dollars' worth or something.

Q. Those were in the bank?

A. Yes, sir.

384 Q. And some fifteen hundred or two thousand dollars' worth that were in the hands of Mrs. Johnson?

A. Fifteen hundred dollars, yes, sir, I knew about that.

Q. Well, you knew that he was proceeding to put in his money?

A. Yes, but that wasn't any great sum, Gus.

Q. No, that wasn't a great sum, but the coal lands were a great sum.

A. As I say, I never was familiar with that. I knew about the Johnson stuff and tugs and coal flats.

Q. Well, the tugs was a good large sum?

A. Twenty two thousand dollars.

Q. Twenty two thousand dollars to the Griffiths?

A. Yes, sir, and nothing to me.

Q. Well, you held an obligation, didn't you?

A. Well, was supposed to have held one.

Q. Yes, sir, and got—that was signed by Mr. Leathe?

A. Which he denied or thought might be a forgery.

Q. Very good—you got your money?

A. Yes, I got part of it.

Q. And made an arrangement in regard to the balance?

A. Yes, sir.

Q. After you had resigned from your connection with the Crown Coal and Tow Company, did you then again, at a later day, resume your connection with it?

A. Yes, sir.

Q. And how long did you then continue in it after your second——

A. I was with the Company until it was sold out.

Q. Now, you had authorized Mr. Leathe in writing to sell your interests in that Company, had you not?

A. Well, they had in evidence a paper that I signed.

Q. You knew that the sale was going on?

A. Not until the day of the sale.

Q. Well, some days before that?

A. No, sir.

Q. You attended meetings of the Directors?

385 A. In Belleville.

Q. And here?

A. I don't remember. The minute books will show.

Q. You say you were there to execute papers?

A. I was told to be at the office at eleven o'clock the day of the sale, and we waited around—Taylor and I together—and then went to the St. Nicholas Hotel.

Q. You did execute papers, did you?
A. I did, yes, sir.
Q. And there was no compulsion about that, was there?
A. Well, you remember what I told you?
Q. No, I do not.
Mr. THOMAS: You might state what you told him.

(Mr. KOERNER:)

Q. You knew what the purpose was?
A. I knew it was to sell the Company.
Q. You knew that from Mr. Leathe, didn't you?
A. I asked you if it was all right to sign those papers, and you said it was.
Q. What papers did you sign?
A. Well, I couldn't tell you what they were now.
Q. Well it was right if I told you so undoubtedly?
A. (No answer.)
Q. You made no inquiry of Mr. Leathe of the amount that he was to receive?
A. I don't remember—I couldn't swear now whether Mr. Leathe was around there or not. If he was he was in another room from what I was.
Q. Well, while the sale was going on all the negotiations had been conducted by Mr. Leathe, hadn't they?
A. Well I couldn't tell you only from what I heard from Chipley. He said he did the selling and run the whole business.
Q. Well, you knew that Mr. Leathe was the man that was to get the money?
A. I knew that Mr. Leathe was the man that was likely to be the boss.
Q. You knew also that you had entrusted your interests to Mr. Leathe?
386 A. Yes, sir, and I thought he would not sell it for anything less than what it cost him.
Q. You never asked Mr. Leathe what he was going to sell it for?
A. I never knew it was to be sold.
Q. When you did, when you were there to execute the papers, when you went there to sign the papers?
A. Well, then it was all over, except parts, you might say.
Q. Well, the papers couldn't be executed without you?
A. Well I had one share of stock to sign over to the people that bought, Mr. Gary.
Q. You had also action to take as a Director of the Company, did you not?
A. I couldn't tell you that.
Q. Did you resign your position at that time as a Director?
A. I think I did.
Q. Why did you do that?
A. Because I was told to.

Q. And you never asked Mr. Leathe what he was receiving for the property?

A. No, sir.

Q. You knew that you had given your interests to him, and you were satisfied with what he would do?

A. Well, I won't say that I knew that I had assigned over to him and knowing him as I did, I thought that he would get all there was in it.

Q. Well, they made a pretty good sale, didn't they?

A. Not from what I understand now, no, sir.

Q. Well, as your idea was at that time, it was a good sale?

A. Well, if I had had the access to the Company's books and knew what was paid out and taken in, why I might have been a judge.

Q. But as to the value of the properties themselves, you were able to judge of that irrespective of the cost?

A. Well, I am not familiar with railroads. I couldn't tell you whether the railroad was worth $5000, a mile or $100,000.

387 Q. Didn't you say at the time of the sale, or shortly afterwards, that five hundred thousand dollars was a good price?

A. If only a couple of hundred thousand dollars had been paid out for it, yes, sir, as I understood from men here in town that the whole shooting match oughtn't to have cost more than two hundred and fifty or three hundred thousand dollars, and of course if that was the fact, why, five hundred thousand dollars, I thought, was a good sale.

Q. You did think, then, that five hundred thousand dollars was a good sale?

A. Under the circumstances, yes.

Redirect examination.

(Mr. THOMAS:)

Q. When Mr. Leathe took up the Johnson bonds, did he take your note for them?

A. Yes, sir.

Q. You know what he did about the seven hundred and fifty dollars?

A. No, I don't. He took my note also when he bought the "Archie Parker" tug, took my individual note—and charged interest on it too.

Q. Now, Mr. Adams, you didn't know at the time of this sale that there was a profit and loss account of the Crown Coal and Tow Company which showed a loss of forty thousand dollars either, did you?

A. No, sir.

Q. Who do you say managed the business during the time after Mr. Chipley left—to whom did you have to go for directions?

A. Mr. Leathe?

Q. Well, for only big things or for little things?

A. Anything. I had no authority at all as manager. I wasn't manager only on the letter heads.

Recross-examination.

(Mr. KOERNER:)

Q. Didn't you sell the coal?

A. Yes, sir, so could any man at twenty-five dollars a month sell coal.

(Mr. THOMAS:)

Q. Never made a contract without consulting him?

A. No, sir.

388 Q. He never allowed that?

A. No, sir.

(Mr. KOERNER:)

Q. You made contracts in which you consulted Mr. Leathe?

A. I had to consult him.

Q. Didn't he go a good deal upon your advice in relation to those contracts?

A. I couldn't say that he did. I had run the business for years before I had connected myself with the Crown Coal and Tow Company and had always been successful. Never had any forty thousand dollar loss account, and, while it is true the Company when it was new—the Crown Coal Company, hadn't made any enormous profits, but they didn't owe anybody or anything only the current bills, and the Western Coal and Tow Company had made money.

(Mr. THOMAS:)

Q. They had taken the product of the Crown Coal Company?

A. Yes, sir.

(Mr. KOERNER:)

Q. Didn't you carry on the business of these two corporations afterwards organized as the Crown Coal and Tow Company?

A. Well, in one way I probably did, but not in the same way I had before.

Q. What was the difference?

A. Because I had to consult Leathe, and couldn't do anything without going to the man and find out what he wanted and then go back to the office and find out what I could do—well, maybe in the meantime the Consolidated Coal Company would close up with them.

Q. Well, Mr. Leathe generally took your judgment on these matters, wouldn't he?

A. Well, he would consult with me, yes, sir.

Q. Well, took your judgment?

A. Well, I would have to wait several hours to get my answer, while other people don't do that but finish up and sign the contract.

Q. That profit and loss account which you speak of, that included the construction account, didn't it?

A. Well, there was some few thousand dollars spent on the tugs

Q. And there was some money spent on sinking shafts?
389 A. I don't know how they kept the books. I couldn't tell you because I didn't have access to the books.

Q. So when you say there was a forty thousand dollar loss in the business you don't mean that was that much loss in the conduct of the business and the work?

A. Well, if the books were kept right and there was a showing of that much loss, I would judge it was a loss, and in the construction account——

Q. That is what Mr. Thomas includes in his profit and loss account?

A. Construction account and profit and loss are different affairs. One is a betterment and improves the Company.

Q. Goes as a part of the supposed losses of the Company, what they expended in sinking shafts?

A. Well, that is a betterment. A piece of ground with a shaft sunk in it is better than without.

Q. You don't mean to say that the Company lost forty thousand dollars in business?

A. Well, I don't know.

Q. You were the general manager?

A. Well, I was general manager on the letter heads, but as far as looking at a book I had no authority.

Q. Do you mean to say that you had no access to the books of the Company?

A. I mean to say that on an occasion or two that I was looking at the books, the bookkeeper was called down for letting me look at them.

Q. The books of the Crown Coal and Tow Company?

A. Yes, Sir.

(Mr. THOMAS:)

Q. By whom was he called down?

A. By Mr. Leathe.

(Mr. KOERNER:)

Q. Weren't the books of the Company always lying open on the desk there?

A. Oh, books of John Smith buying one hundred bushels of coal at eight cents a bushel and paying for it, yes, sir.

Q. But I mean the account books of the Company?
390 A. No, sir, I don't know that I could pick them out now out of the books of the Company, the accounts of the Company. I don't know that any of the books of the Coal and Tow Company or the Railroad Company could be picked out from the books of the Company now.

Q. That is different. The question is, whether the books weren't right there always where you could see them every day?

A. No, sir.

Q. Lying upon the desk of the bookkeeper or in the vaults?

A. No, sir.

Q. Where were they?
A. Most of them in Mr. Leathe's possession.
Q. Wasn't Mr. Leathe's office there?
A. Oh, yes, so were several safes there.
Q. You mean the books of the Crown Coal and Tow Company, will you swear that during that time while you were general manager, were in Mr. Leathe's private possession and not——
A. The account books were there.
Q. What account books?
A. Well, as I never had access to the books of the Company, I don't know how they kept them. The only part of the books I ever got a chance to see was when there was a scrap between Waddock and Chipley, and an expert bookkeeper was called in—where they pasted up a lot of leaves—I got a chance to see that.
Q. I mean the account books, the day books and ledgers, and books showing the general transactions of the Company. Were they in Mr. Leathe's private possession, kept under his private lock and key?
A. Well, you say day books and ledgers showing the general transactions of the Company. I can't answer that.
Q. I mean the books showing the commercial transactions of the Company?
A. Well, it is according to what commercial takes in. The books showing what amount of coal sold, expense account and all that, were books that were handy, but books showing the price of coal lands—never saw one in my life. If that don't belong to the
391 Crown Coal and Tow Company, I don't know what does.
Q. That is a different matter. I am not talking about the purchase of coal lands, but about the commercial transactions of the Company, buying and selling coal, operating mines, operating the tugs and barges and so forth. Those are the commercial transactions.
A. Those books were in the bookkeeper's hands and put in the vault at night.
Q. You could see them whenever you wished to, couldn't you?
A. No, sir—I did on occasions look at the books and was told that I wasn't to look at that, and Mr. Leathe got after Mr. Borman about it.
Q. Who told you that?
A. The bookkeeper himself.
Q. You weren't present when Mr. Leathe called him down? When you say Mr. Leathe called him down, you mean to say you so understood from Mr. Borman?
A. I know on one occasion Mr. Leathe asked me what I was looking for, that the bookkeeper would tell me what I wanted to know.
Q. What were — looking for?
A. I don't know just now—was looking to see what the Company was doing and what they were buying and paying out and everything else, and I couldn't find it.
Q. You are now talking again about the purchase of coal lands?
A. Well, I should think they would be in a book with the rest

of it, capital stock of the Company and all that. I never had a chance to see any of it.

Q. But you did have a chance to see——

A. To see where John Smith bought a hundred bushels of coal.

Q. Well, when you consider the matter a little more thoroughly, the general books of account showing the business of the Company, the commercial transactions of the Company were at hand when you wanted them?

A. No, sir, because I was told that what all I wanted to know about these books, the bookkeeper would tell me—and I got a state-
392 ment that he gave me, and he told me never to let anybody know that I got it.

Q. Who told you?

A. Mr. Borman.

Q. You are speaking altogether of what Borman said?

A. Well, a man only acts as he——

Q. Couldn't you go behind the counter any time you wanted to where Mr. Borman was working?

A. Certainly I could.

Q. Weren't the books lying there?

A. As I probably could go in Mr. Leathe's office right now. But I wasn't wanted there.

Q. As general manager, did you ever make an effort to look at a book that was withheld — you?

A. I never figured myself only as a coal salesman. I never was manager of the Company.

Q. You considered yourself manager?

A. No, sir, not under the circumstances. And I believe if you will produce my resignation it will show what I thought of my job as general manager.

Q. You mean your first resignation?

A. I only sent one.

Q. Well, you afterwards again took service with the Company?

A. Yes, sir, and then I was discharged.

Q. After that?

A. Yes, sir, after it changed hands.

Q. But you were with the Company for how long before it changed hands?

A. Barring a few months I was with the Company during its reign.

Q. So after you resigned you only remained out of the office a few months?

A. I think it was.

Q. And afterwards took service with the Company?

A. Yes, sir.

Q. As general manager?

393 A. Well, yes, sir.

Q. And you received a salary?

A. I did, one hundred and twenty-five dollars a month, I believe, I am not sure of that.

Signature waived.

394 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the April Term, A. D. 1900.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Depositions of John T. Taylor, R. W. D. Holder, Fred B. Merrills, and Edward L. Thomas, taken before Referee Marshall W. Weir, in His Office, in the City of Belleville, Ill., May 22d, 1900.

JOHN T. TAYLOR, being duly sworn deposed as follows:

(Mr. THOMAS:)

Q. State your name, age, residence and occupation?

A. John T. Taylor, forty-five years old, residence Belleville. I am a kind of dirt mover—grading.

Q. Were you connected with the Crown Coal and Tow Company, and the St. Louis, Belleville and Southern Railway or Belleville City Railroad at the time that Mr. Leathe was handling them?

Q. Yes, sir.

Q. Were you present at a meeting held March 25th, 1893, when these Companies were organized?

A. Yes, sir.

Q. What was said there regarding the management of the coal affairs in St. Louis, as to who was to manage it, whether they were to be paid any compensation?

395 A. Mr. Adams and myself were to control the Company and run it as we had run the business before.

Q. Were you to be paid?

A. We were to be paid the same salary as we got before.

Q. What was said regarding any compensation to other officers?

A. There were not any to be paid—not until the railroad was built and in operation. That was my understanding.

Q. Now, what did Mr. Leathe do regarding your control immediately afterwards in St. Louis?

A. Well, he put in Mr. Chipley as president, and between Chipley and Leathe they controlled the whole thing and we had to do just as they dictated, for about a month. Then they took a notion and fired us, me especially. Adams resigned on account of firing me. He was really the head of the whole business.

Q. Then what took place in the fall of that year?

A. Well, they got tired of Chipley's management and then Leathe put me back in there again.

Q. Mr. Adams too?

A. Mr. Adams too.

Q. Now, who controlled it after that?

A. Leathe.

Q. What sort of control did he exercise?

A. Why, he run it to suit himself—at least he wouldn't allow us to dictate—we did dictate but he wanted to run it his own way.

Q. What do you mean by dictate?

A. Tried to advise him for the best interest of the Company.

Q. But he wouldn't listen?

A. He wouldn't listen at all.

Q. Now, did you have any conversation with him regarding litigation in August, 1893, or about that time?

A. In August, let's see—I don't know whether it was in August or not, but it was just before we went back.

396 Q. Was it before he brought the suit for injunction?

A. It was after that. He said it was foolish, that we had no money to litigate him, that the best thing we could do was to be quiet, be in harmony with him, if we didn't it would be worst for us, that it would be a heap better for us to stay with him.

Q. Was there any litigation brought at that time, except what he brought himself?

A. None that I know of.

Q. Wasn't that about Waddock, that conversation?

A. Well, there was a little trouble about Waddock. Leathe insisted on having Waddock for Director in the Company and Mr. Thomas here protested against it. Still he got him in for Director—assigned him a share of stock.

Q. Did he want to get him out afterwards?

A. Yes, sir.

Q. So the Waddock episode was all his own business?

A. All his own business. He got him in, and then after he got him in and found out he couldn't work him to suit him, he wanted to get him out.

Q. Now, Mr. Taylor, was there ever any attempt made by you—or you say—were you a Director of the Company?

A. Yes, sir.

Q. Were you a Director on November seven and eight 1895?

A. Yes, sir.

Q. Were you present at any meeting of the Directors or at a meeting where some of the Directors were present in St. Louis about that time?

A. I was—they notified me to come—that was during a sale—there were no meetings called as I know of at all.

Q. Who was there?

A. Why, Mr. Adams, Mr. Taylor, Mr. Merrills,—Mr. Koerner was there too.

Q. Was there ever any consultation between you and any
397 of the Directors in your presence and Mr. Leathe, regarding the sale?

A. No, sir.

Q. I want to ask you if you knew anything of the price that he was to receive at that time?

A. No, sir.

Q. When did you first learn?

A. After the sale was made, a few days after. 'Chipley came to

me—he was a stockholder and Director too, and was practically the prompter in selling the Company—wanted to know what percentage he would allow him on our stock, if he would sell the Company out to advantage—make money out of it—we was to allow him two per cent. anyway. I says "I don't know anything about this thing, I don't know what price it sold for." He says "We got five hundred thousand dollars for it, that is Leathe got that for his stock."

Mr. KOERNER: I object to anything Mr. Chipley said.

Q. What did you do in regard to that when you found out it was sold for five hundred thousand dollars. What did you do with Leathe?

A. I went to Leathe the next day, or the day after I think, and I says, "Mr. Leathe, when are you ready to settle up with us as far as the stocks and bonds?" "Oh, I don't know, we'll see." I says "I learned you got five hundred thousand dollars for the stocks and bonds, and I think you ought to be able to settle up with us now." He says "Who told you?" I says "Chipley, because he wanted a percentage out of me." I told Chipley when we got settled up with our stock and bonds we would talk about percentage afterwards.

Q. Well, now, so that was the first you ever learned about the price he got?

A. That was the first I knew of it, and that was, I guess, three or four days afterwards.

Q. Now, what endeavors from that time on and how long did you make those endeavors to settle with Leathe in regard to the matters that he had of yours in hand?

A. Why, I was there perhaps once a week, perhaps twice,
398 for a long time, over two years—that is, I did insist on twelve hundred dollars about two months after the sale. I told him if he couldn't settle up he should give me twelve hundred dollars on account of the sale anyway. So he gave me that, and he said as soon as he got a little liberty, he "was a little busy now," he would fix the other up and settle the matter. That is the way he kept me going right along. Every time I would see him—"Well, Ain't ready yet"—something of course in the road all the time. Sometimes I would get a little off about it—threaten to sue. He said "You better stick to me, a good deal more coming to you if you stick to me." And if I would get him warm, he would say, "There is nothing coming to you."

Q. What did he say one time about sticking to him—"help us beat Thomas and Adams out?"

A. He said if I stuck to him, helped him to beat Thomas and Adams, why he said there would be a good deal more due me.

Q. How long was it before you brought any suit against him for that?

A. Why, it was a little over two years, I think, I ain't certain.

Q. Do you remember any proposition being made by myself through you to Mr. Leathe for settlement?

A. Yes, sir.

Q. When was that?

A. I think that was about six months or a year after the sale. I ain't sure, but it was sometime afterwards anyway. I told him the proposition, told him I could save him about forty thousand dollars —that is, on Thomas, Adams and Taylor—if he would just quit this litigation, get down to business and settle up. And he wouldn't listen to it.

Q. What did he say about Thomas' interest in it at that time?

A. Well, he didn't have any interest. Said Thomas had nothing coming.

Q. Well, what statement could you ever get out of him at any time? Or what promises of a statement did you have from him?

A. We got promises of statements right along until I told him if we didn't get one I would sue him. He says "Well, go
399 ahead, sue me, you won't get one any quicker by suing than if you wait." So I went and sued him anyway, and we fought quite a little, and at last I did get one. The statement ain't hardly worth looking at. It ain't correct.

Q. State if you knew Chipley's circumstances after November fifth, 1895?

A. Why, he was pretty well fixed.

Q. Could bills be collected?

A. He showed me a bank book where he had eighty three thousand dollars in the bank.

Q. Could bills be collected off of him?

A. Yes, sir.

Q. Could bills be collected off of Bart. Adams?

A. He (Chipley) made it his business to run around town and pay bills. He owed most everybody in St. Louis that he could get credit from.

Q. How about Bart Adams?

A. Oh, well, Bart was in the same position, we all were.

Q. (Question repeated.)

A. No, sir, he didn't have any money at that time. I had to lend Bart Adams money after the sale to help him pay some of his bills.

Q. But he had property, hadn't he?

A. Yes, sir, he had property, it could be collected by law.

Q. Now, one thing. I believe Mr. Leathe included in his sale some bonds belonging to you.

A. Four thousand dollars' worth.

Q. What were those bonds?

A. They were coal Company bonds. I borrowed between nine hundred and a thousand dollars off of him, and I put those bonds up as collateral for the money I borrowed off of him.

Q. Did you ever authorize him to sell them?

A. No, sir.

Q. He says you assigned all your interests to him, is that so?
400 A. I gave him an option on the stock for five years. The bonds were never assigned to nobody. They were collateral for the money I borrowed. Another thing I would like to put in here: If Mr. Leathe will furnish me the bonds I will take up the note.

Cross-examination.

(Mr. KOERNER:)

Q. You have a suit pending in St. Louis against Mr. Leathe, have you not?

A. I have, yes, sir.

Q. I don't quite understand what Mr. Leathe said to you about your better not suing him, said if you would stick to him and not sue him you would do better?

A. Yes, sir, he threatened me that way.

Q. Didn't he say to you that Mr. Thomas was prosecuting an unjust claim, that you ought to help him defeat it?

A. Well, he always said Thomas had nothing coming, which I knew was wrong.

Q. That was Mr. Leathe's position in the matter, wasn't it?

A. Yes, sir.

Q. That Mr. Thomas' claim was unjust, nothing coming to him. That is right, isn't it?

A. It is not.

Q. That was his position?

A. Oh, his position was nobody had anything coming.

Q. I am talking about Mr. Thomas. He never said you had nothing coming, did he?

A. At times he said so too; just how he felt.

Q. As to your matter, he said there were things in the way, he couldn't make a precise statement as to how that would come out.

A. He always did say that, and says that yet, and I guess he will say that as long as he lives.

Q. That is what he said?

A. Yes, sir.

401 Q. Didn't he tell you that Thomas had received from the purchasers an amount of money greater than he had put into the enterprise, consequently had no further claim upon him?

A. He said Thomas had sold his stock. I asked him "Did he sell it?" He says "No, Charlie Thomas sold their stock."

Q. Didn't he tell you, or didn't you know, how much Thomas had received for that?

A. He didn't tell me, but Chipley told me, and Charles W. Thomas told me.

Q. You knew, then, that he had received fifty thousand dollars from the purchasers?

A. Yes, sir, for the stock.

Q. And Mr. Leathe said that that was more than was coming to Mr. Thomas from the matter?

A. He didn't say that.

Q. Had no further claim?

A. He didn't say that, no.

Q. What did he say about that?

A. He said that the Company didn't owe Thomas nothing, said so form the start on, never made any remark about selling at all; he just stuck to that all the way through.

Q. Well, from the start, you mean from the time that the property had been sold?

A. The start with that suit right here at the Court House before the property was sold. That started it out—before the railroad was built.

Q. He said then he had nothing coming until the contract of January 24th, 1893, had been complied with, isn't that it?

A. He told me once, I don't recollect the date, but he told me that Mr. Thomas hadn't anything coming. He says "He may have a little coming, but he ought to wait until he got the railroad built. I have put money into this thing, and when the railroad is built, Mr. Thomas and me will adjust it," he says.

Q. You talked about a meeting of March 25th, 1893,
402 & 403 you said it was there agreed that the officers were not to have any salary.

A. Yes, sir.

Q. Was that by resolution?

A. A verbal agreement among all the Directors and Stockholders and Mr. Leathe. Mr. Leathe said he had to put up money to carry out the scheme and he said he didn't think it would be wise to have any salaries outside of Adams and Taylor who were drawing salaries from the Coal Company.

Q. Nobody should have any salaries?

A. No, sir.

Q. Now, you two people did draw salaries thereafter?

A. We did draw salaries.

Q. You stated that you gave Mr. Leathe an option on your stock. Did you mean by that that you gave him authority to sell it?

A. I did.

Q. Then you learned that the sale had been made for five hundred thousand dollars, the sale of the property.

A. I learned afterwards.

Q. That was five hundred thousand dollars to Mr. Leathe and so and so much to Mr. Thomas?

A. And so and so much to Mr. Chipley.

Q. How much was it altogether, do you know?

A. I think about seven hundred and fifty thousand, somewhere about there. I never figured it up.

Q. Now, how would — divide that seven hundred and fifty thousand? Who got it?

A. Well, no, not seven hundred and fifty—I know Chipley got thirty three thousand dollars for his stock. He had seventy eight shares. Then Charlie Thomas and Ed. here, had some hundred and odd shares.

Q. How much did he get?

A. I couldn't say exactly. I never asked them that.

Q. You knew they got fifty thousand dollars, didn't they?

404 & 405 A. No, I don't, I wouldn't say that. I knew they got at the rate of forty nine cents on the stock.

Q. I think you said just now they told you they got fifty thousand dollars?

A. I think not.

Q. Well, suppose they did. Now Chipley's thirty three thousand and Leathe's five hundred thousand——

A. That would be five hundred and eighty three thousand dollars.

Q. You considered that a good sale at the time for this property?

A. I couldn't consider it because I couldn't know what to consider, didn't know what they were getting. I found out three or four days after the sale what they got. Chipley got forty five for his stock and Thomas got forty nine for his stock. I don't know yet what Leathe got for his stock.

Q. Well, leaving aside the stock and bonds, the properties themselves passed, they went with that sale, they were pretty well sold at five hundred and eighty three thousand dollars?

A. They were not.

Q. You so considered at the time, didn't you?

A. No, sir.

Q. Didn't you say so at that time that it was a good sale?

A. No, sir, I say no.

Q. Didn't you say at the time that it was a good sale?

A. No, sir, not the way the things turned out, it couldn't be a good sale.

Q. Well, the way things turned out was an after thought. I say at that time you thought it was a good sale, Mr. Taylor.

A. Well, if he had figured up what the thing had cost him and what he had paid out, it isn't a good sale.

Q. That isn't the question, whether according to the value?

A. Well the property is all right, a good sale outside of extras.

Q. What you mean is that you are not satisfied with
406 & 407 the distribution of the prooceeds?

A. No, sir.

Q. But that the property may have not sold for a good price you are satisfied of that?

A. Well, I have to be.

Q. You don't think so, do you?

A. Don't have to think.

Q. What was your opinion at that time?

A. My opinion is that if the Company had been run right and handled right they could have got seven hundred and fifty or eight hundred thousand dollars as easy as five hundred and odd thousand.

Q. At that time?

A. Yes, sir.

Q. Didn't you say that five hundred thousand dollars was a good price for Leathe to get at the time?

A. Well, I couldn't say. I found out diff rent.

Q. But when you did find out you were satisfied with the price?

A. I had to be. I keep telling you we had to be all along. We were the fifth wheel in the wagon.

Q. You were present at the sale?

A. Didn't know anything. I asked Leathe a few days before the sale what he was going to get for the stock, but he wouldn't tell me. He said "It will be a good thing for you, it will be a good sale." That was all I could get out of him.

Q. You were there, signed papers connected with the sale?
A. Yes, sir, signed papers ever since we started that.
Q. Voted for what was——
A. Didn't vote at all with us—put in a separate room on the outside—business was done in another room—when they got the papers all drawn up to suit them "Walk in, my friends, and sign them."
Q. You were of age at that time?
408 A. Yes, sir.
Q. Wasn't there some voting done at the time?
A. No, sir,—nothing to vote—asked us to sign, we signed.
Q. A meeting of Directors?
A. No, sir.
Q. In which you resigned?
A. There was no vote taken to resign or anything of the kind. There was no meeting called.
Q. Well, the Directors were all there, were they not?
A. The president didn't call anybody. All he done——
Q. Didn't you tell Mr. Leathe that you were well satisfied with the amount of the sale?
A. I did not.
Q. Never did?
A. No sir. I told Mr. Leathe if he intended to litigate, to go on the way they were going, the best thing I could do was to call out or give it away to somebody and get out of it.
Q. You considered that giving it away?
A. Yes, sir.
Q. You did collect twelve hundred dollars from Mr. Leathe?
A. I did on account of the sale.
Q. Have you any receipt for that amount?
A. I gave him a receipt on account of the sale, as I said. He has got a note against me for between nine hundred and a thousand dollars for which I gave him bonds as collateral. I am ready to pay for that whenever he will settle up the bonds.
Q. The sale included the bonds and the stock?
A. I didn't understand that.
Q. You say the sale didn't include the bonds?
A. Why, I guess he took and sold them, I don't know, I never heard of that. I know I didn't agree to sell the bonds—haven't agreed yet.

Signature waived.

409 R. D. W. HOLDER, being duly sworn, deposed as follows:

(Mr. THOMAS:)

Q. State your name, age, residence and occupation?
A. R. D. W. Holder; my age is fifty three; I reside in Belleville; practice law.
Q. Do you know Mr. Samuel H. Leathe?
A. Yes, sir, I have met him a number of times.
Q. Did you have any occasion in August, about 1893, to go with Mr. Boling to his office in St. Louis about any matter?

A. I went with Mr. Boling to St. Louis to see Mr. Leathe, the date I don't exactly remember just what it was, but I think it was probably '93.

Q. Was it prior to your bringing the suit for Boling?

A. Yes, sir, it was prior to a suit which I brought to establish a lien for grading done on the so-called Thomas road—it was the road Mr. Leathe afterwards purchased—the Belleville and St. Louis. Boling had a claim for about six thousand dollars, that is the amount I think had been agreed upon prior to that time between Mr. Thomas and Boling who had at one time been partners in the grading, and, by an agreement between them, Mr. Boling was to have that amount —something like six thousand dollars, with some deductions probably to be made little claims that were outstanding against the firm, and I was seeking to collect this for Mr. Boling, and I went to Mr. Leathe thinking probably to dispose of it there, assign him the claim. I understood that he had bought it and was going to finish the road and perhaps pay all the old indebtedness. That was the theory I went on.

Q. Now what took place there in regard to his statement as to whether there was anything coming or would be coming to Thomas?

A. Well, Mr. Leathe refused to purchase the claim for anything, because he stated that nothing was coming to Mr. Thomas—at least that was the substance of what he said. I don't remember his exact language.

410 Cross-examination.

(Mr. KOERNER:)

Q. That is, nothing coming to Mr. Thomas at that time?

A. Yes, well, he said there was nothing coming to Mr. Thomas, I know. I thought at the time there was or would be. I didn't know, of course.

Q. Well, you went on the theory that there was something due Mr. Thomas from Mr. Leathe at that time which you wanted to collect for Mr. Boling?

A. I went upon a theory I had at the time that Mr. Leathe would pay these claims. It was a claim against the Company really, although as between Thomas and Boling. Thomas had been acting somewhat in a dual capacity as contractor and also as an officer of the road, and he had an interest in this contract himself at one time —adjusted it—and it was coming, we thought, from the road, and I understood that Mr. Leathe had assumed to pay these claims. He said no, wouldn't pay anything, and didn't think Mr. Thomas would have anything coming.

Q. You didn't enter into any discussion of what arrangement there was between him and Thomas?

A. No, not fully. He didn't seem inclined to enter into that discussion. He refused to treat with me in the matter.

Q. Were you aware at that time of the agreement between Thomas and Adams and Leathe of January 24th, 1893?

A. What, that agreement that Mr. Leathe set up you mean, the written agreement afterwards?

Q. Written agreement.

A. No, I don't think, no.

Q. You approached Mr. Leathe with the view of selling to him this claim?

A. Yes, sir, I thought that there was an unadjusted difference between him and Mr. Thomas. I had taken it from the deed, or from what I had understood——

Q. Now, I don't care for what you understood, but I understand you now to say that you went over there with a view of getting Mr. Leathe to purchase this claim.

411 A. Yes, sir, I did not know whether he cared to pay it outright at that time. I supposed he would hold it, and adjust it with Mr. Thomas, that was my idea really, to sell it as a claim against Mr. Thomas.

Q. He declined to purchase it?

A. Yes, sir.

Q. And made the statement that there was nothing due Mr. Thomas?

A. Yes, sir.

(Mr. THOMAS:)

Q. He didn't use the word "due," did he?

A. He said "coming" I think. I don't know just his language now, but he talked as if Thomas had had more than would be coming to him. My recollection now is, that he commenced to talk about some other things that he had paid and that Mr. Thomas wouldn't have that much coming to him.

(Mr. KOERNER:)

Q. Well, what did he say he had paid, since you are getting into details?

A. Well, I couldn't mention any particular thing, but he did mention at that time some things he had paid. Possibly Boling may remember about it, he was present at the time. I don't remember what it was, but he did mention some things.

Q. Well, this claim of Boling's was one made prior—whatever claim he had had accrued prior to when Leathe had anything to do with the matter?

A. Yes, sir; yes, sir, that was a claim against the Company originally.

Q. It wasn't any claim against Mr. Thomas?

A. Why, as I understand it, Mr. Thomas had assumed to collect it from the Company and had given Boling substantially his personal obligation.

Q. Was Thomas the contractor to do this work? And as contractor hired to do it?

A. I think together they were joint-contractor-. Just whether the firm of Thomas and Boling were sub-contractors to Thomas or not,

I don't remember now. I never got far enough in the case to
412 find out exactly.

Q. Well, you brought suit on that claim?

A. Yes, sir, and it was afterwards dismissed.

Q. And you dismissed it?

A. Yes, sir.

(Mr. THOMAS:)

Q. How did it come to be dismissed, Bob?

A. Well, as I remember now, you thought you could adjust the matter with Mr. Leathe and settle with Mr. Boling; thought it better without this suit pending, it was in the way of some transactions; and Mr. Boling was disposed to accommodate you in the matter.

Signature waived.

413 FRED B. MERRILLS, being duly sworn, deposed as follows:—

Q. State your name, age and place of residence?

A. My name is Fred B. Merrills, my age is thirty-five, and I live in Belleville.

Q. What connection, Mr. Merrills, did you have with the St. Louis, Belleville and Southern Railway (formerly the Belleville City Railway) and the Crown Coal and Tow Company, during the time that Mr. Leathe was handling the Company?

A. Why, I believe I was a Director for Mr. Leathe. I don't remember when I went in or how long I continued in.

Q. Did you continue in up to the time of the sale of the properties by Mr. Leathe?

A. Yes, sir, until sometime after the sale, when I got a letter from Mr. Gary saying there would be a meeting called some place in Chicago to accept my resignation.

Q. Now, I want to ask you if you were present in St. Louis at the time of the negotiations for the sale of the property, along on November seventh or eighth about, 1895?

A. I don't remember the date when this occurred, but I was there.

Q. How did you come to go there?

A. Why, I believe it was at the request of Mr. Koerner.

Q. Well, what consultation was held between you, as a Director, and Mr. Leathe, as to this sale, prior to the sale?

A. None.

Q. What consultation was held in your presence by Mr. Leathe with any of the Directors of the Company, prior to the sale in regard to the sale?

414 A. None that I remember of.

Q. Do you know what the property was sold for by Mr. Leathe?

A. I didn't know at that time. I learned afterwards.

Q. When did you first learn what the price was that had been obtained?

A. I think it was when Mr. Koerner was having a scrap with Mr. Leathe about his attorney's fees.

Q. What time was that—as compared to the sale I mean?

A. That was sometime afterwards, some months.

Q. You never knew, then, on the day of the sale or at the time the thing was being consummated, anything about the price that was to be obtained?

A. No, sir.

Cross-examination.

(Mr. KOERNER:)

Q. You had no interest in this matter?

A. Nothing further than to do what I could do—take care of Mr. Leathe's interest. That is really what I was in there for.

Q. You had no substantial interest in the Company?

A. I had no money of my own in there, no.

Q. You were elected a Director by Mr. Leathe's interest?

A. Yes, sir.

Q. And of course, would be apt to vote as requested—provided there was nothing wrong asked of you?

A. Why, of course.

Q. It didn't matter to you whether the property sold for five hundred thousand dollars or for fifty cents, personally?

A. No, not personally, I didn't care a straw about that.

Q. There were certain things done there by the Directors, voting done, some papers signed and one thing or another?

A. Oh, there was quite a number of resolutions put. Mr. Leathe stated that he had sold his stock, and I believe, stated that he resigned as a Director. I couldn't remember all the different resolutions that were put and different steps that were taken.

415 Q. Now, do you remember a certain agreement made there with Mr. Thomas, about bonds that he had in the Union Trust Company? Did you assign that, or do you remember about that?

A. Do you mean I assigned it?

Q. Yes, sir, a *a* Director and Stockholder.

A. No, I don't remember anything about that. I will tell you how that thing was. Those people had a suit of three rooms at the St. Nicholas Hotel, and that business was all transacted by installments. They had a middle chamber and an ante-room and an outer court. You fellows that transacted the business were in the middle chamber. There would be some two or three fellows in there and transact part of the business; they would step out and more of us would step in and transact some more business. And that is the way it was done.

Q. That is, the parties controlling the properties had agreed upon the sale and the rest were details to be carried out?

A. They were not there altogether. Part of the time Mr. Charlie Thomas was in. Ed. Thomas I don't think was there. When Mr. Thomas was in I think I was out, and *vice versa*.

Signature waived.

EDWARD L. THOMAS, the defendant being duly sworn, deposed as follows:—

At the meeting of March 25th, 1893, the subject of the conduct of the coal business in St. Louis, where the business of the Company was being transacted, came up for discussion, and it was agreed to accept the experience of Messrs. Adams and Taylor in the coal business which they had had for a number of years, since 1886; that they should conduct the business as they had theretofore conducted it and that they should receive a salary such as they had been receiving from the old Crown Coal Company. It was also agreed that none of the other officers or Directors should receive any compensation or salary. During the summer of 1893, by reason of Mr.

Leathe's refusal to carry out his contract regarding the prop-
416 erty of my wife's, I refused to take any further part in the conduct of the Company's affairs, learning at that time that it was useless to advise Mr. Leathe or to attepmt to persuade him to conduct the busines so it would be profitable to the parties interested. He had placed Mr. Chipley in charge of the affairs in St. Louis, contrary to the agreement made on the 25th of March, and Mr. Chipley had proceeded in such a way as to destroy the business theretofore created by the Crown Coal Company, which was an exceedingly good and paying business at the time of the sale or transfer to the Crown Coal and Tow Company—or the reorganization, I should say. Mr. Chipley seemed to have control over Mr. Leathe at that time, and it was impssible to get him to see the misconduct of the business as it was then being done. The result was, according to the balance sheet that I saw made out by the bookkeeper of the Crown Coal and Tow Company, that during that summer we lost in the neighborhood of ten thousand dollars in the coal business. Mr. Leathe had placed Mr. Waddock in the Board of Directors, against my protest, at the reorganization on March 25th. I had insisted that he ought not to be there, that while he was a good bookkeeper to be employed as a bookkeeper, but that he ought not to be a member of the Board of Directors because he was a non-resident of the State, and those who were necessarily taken in with him would create a majority of the Board which was contrary to the law, and I tried to persuade Mr. Leathe to get somebody here who was also interested in the Company —Mr. Needles—who had some little interest, or somebody else here. It was agreed and understood by us, and so reduced to record upon the records of the Crown Coal and Tow Company, that the bonds of the Railway Company were to be issued at once. I had entered into a contract with the New York Bank Note Company to issue bonds for the Belleville and St. Louis Railway, and when the transfers were made, and the Belleville City Railway charter was taken I had corresponded with that Company and had received a bid from them to alter the bonds, the alteration requiring perhaps, my recol-

lection is, a hundred and fifty dollars. I was under obliga-
417 tion to them, they having made the plates, to the extent of about six hundred or six hundred and twenty five dollars, and explained this matter to Mr. Leathe, and it was then agreed that they would get the bonds made there and pay only for the alteration, and we did it once because Mr. Leathe had entered into a contract

with me and my wife to place a certain number of the new bonds in the National Bank to secure an indebtedness of mine to the National Bank of about five thousand dollars, the balance to come to my wife upon a transfer made by her and myself to Mr. Leathe of a farm in the southwest quarter of section eleven, Town. one, Range nine west. Mr. Leathe declined to carry out that arrangement, declined to issue the bonds, declined to have them issued, upon the plates on an agreement that we had made in regard to the New York Bank Note Company, and delayed the issuing of the bonds and payment of the bonds for the land so long that I became somewhat put out and kept insisting that he should do it. He declined to do it, refused. I therefore ceased to have any business connection with the Company other than being a Director, consulted with -im no more, advised him no more, nor took any further part in the conduct of the affairs. In August 1893——

Mr. KOERNER: I don't care about interrupting the gentleman, but I suppose it is understood that I can save my exceptions.

Mr. WEIR: It is understood that all exceptions are reserved.

WITNESS (continuing): This is in rebuttal of what Leathe said. In August 1893 we insisted that he should hold Directors' meetings and issue those bonds—order those bonds and execute them. In pursuance of that my brother went over to see him and he has detailed what took place. He declined to hold those meetings and commenced a suit for injunction against us from holding the meetings, including myself, Taylor, Adams and Mr. Waddock. When that injunction was heard I went to Mr. Leathe at a time just before it was heard in the office of the Judge and I tried to persuade him from litigation.

418 I told him that litigation was useless and if there was anything he wanted to have done, he should have it done, and we would do anything in reagrd to the affairs of the Company that he desired, and that he had better stop litigation. He said no, he wouldn't do that. I said to him "It is understood that you had said to Messrs. Taylor and Adams that you would litigate this matter, that you had money and we had no money, and you would litigate it." To that he made no reply, and I again said "Now, don't go on with this litigation; stop it." He said, "No, let it go on as it is." That was the first suit that he brought.

(Mr. KOERNER:)

Q. This conversation that you speak of was in the summer of '93?

A. In August 1893. He was defeated in that suit before the Judge. He then intended to apply for another injunction before the Judge at Pinkneyville, and upon our statement that he should control it as I had told him, why, that was withdrawn, and I resigned as one of the Directors. He chose his own Directors. Mr. Waddock resigned at our request—Mr. Leathe had his resignation but we made no further endeavor to keep Mr. Waddock in, or desire to keep him in—and he went in and elected his own Directors and from that time on controlled completely in every way the business. I think that occurred in the latter part of August, 1893. I then brought suit against the Belleville and St. Louis Railway Company for the pur-

pose of establishing the amount of its indebtedness to me. As I desired he should know this, I procured the Belleville and St. Louis Railway Company to notify him of the plain civil suit and to also inform him that he could defend it if he saw fit. He came into the case and made the defense of it himself, the Company making no defense, and in that defense he filed a bill in the name of himself and the two companies, the Belleville and St. Louis Railway Company and the Belleville City Railway Company, to enjoin my proceedings to judgment in that case. Those records are all in evidence here.

I endeavored in every way to get him to perform the contract in regard to my wife's land, that being the only point I had in
419 the whole matter—didn't care anything about when he paid me or anything about his settlement of the railroad affairs and myself, but my intention and object was to procure a release in accordance with his agreement or a compliance with his agreement in regard to the land conveyed to him by my wife and myself. After the decision of his case of injunction and suit brought by myself he procured Mr. John M. Holmes, according to the information conveyed to me by Mr. Holmes, to attempt an arrangement or settlement of the affairs in order to permit him to issue bonds of the Coal Company. In the meantime he and Mr. Chipley had fallen out and it was necessary for him to have either Mr. Chipley or myself in order to have two-thirds of the stock for the purpose, under the law, of issuing the bonds. Negotiations were pending between myself and Mr. Holmes, Holmes acting for Mr. Leathe for some time looking for a settlement of the entire matter, and finally on account of the difficulties arising in the railroad matter we were so far apart that it was concluded by Mr. Holmes and myself that we couldn't arrive at an arrangement upon the railroad affairs, that we must separate the two affairs and see if we couldn't settle the Coal Company case by itself regardless of the railroad matters. After a month or two's negotiation it was determined by us that I would assist Mr. Leathe in issuing two hundred thousand dollars in bonds of the Coal Company, and that for that assistance he was to procure a resolution of the Board deeding back the farm of my wife for her, reserving the coal, an eight acre piece of land and a right of way for the railway to run through and to pay for that the mortgages then upon the premises, Phillip M. Gundlach's, Anthony Pfeiffer's and Alexander Pfeiffer's interests and amounts being then calculated and a note for my wife's and myself being given to him for the excess, which he now holds. When that was done—finished—he refused to pay the mortgages; declined to do anything in that direction; permitted the mortgages to be foreclosed; permitted everything to accumulate—interest to accumulate, and persistently refused to do as he
420 had agreed to do in any particular. I then proceeded with my suit against him on the railroad matter, by suing him upon the idea alone that it had been adjudicated, that in the cases just spoken of that he was indebted to me, that was removed to the United States Court and pending for three years nearly, perhaps.

At the agreement of March 25th, it was also agreed (this is another branch of it and that is the reason I go back) it was also

agreed that the money and outstanding accounts then due and belonging to the old Crown Coal Company should belong to Adams, Taylor and Thomas in the proportion in which they owned stock in the old Company, and that the new Company should proceed to collect the outstanding indebtedness should use the money for a short time until they go into business, and then turn it over to Adams, Taylor and Thomas. This Mr. Leathe refused to do. After he had collected the indebtedness to a very large extent he refused to permit anybody to collect it. He declined to settle, and in the summer of 1895, I brought this suit against the Crown Coal and Tow Company for an accounting upon this arrangement. When we settled our affairs with the Crown Coal and Tow Company it only referred to the matter of my wife's land, and in that settlement came the money that was to be paid to Taylor, Adams and Thomas for property that they had turned over to the Crown Coal and Tow Company in the same manner in which the property had been purchased and deeded to the Crown Coal and Tow Company by Mr. Leathe. I brought suit in the summer of 1895 for an accounting as I stated, and I had this other suit pending in the United States Court, and that was the sole litigation by any of the parties interested in the Companies.

The mortgages that he had agreed to pay were foreclosed, the property was sold, the time of redemption was expiring and would have expired on the eighth day of December, 1895. I had made every endeavor I knew how to get Mr. Leathe to comply with his contract respecting that land and respecting the affairs of the
421 Crown Coal and Tow Company, it having been determined that we couldn't do anything with the railroad matter. In 1894, after making this settlement, Mr. Leathe, according to the information given me by his attorney, Mr. G. A. Koerner, procured Mr. Koerner to purchase the judgments against me and to get men who had claims against me to sue and proceed against my property and stock for the purpose, as I expressed to Mr. Koerner and as he said he was bound to do on behalf of Mr. Leathe if he insisted on it, of breaking me up. These proceedings, as a matter of course, made it utterly impossible for me to take any further steps with Mr. Leathe, although during the summer of 1894 when he was trying to sink his coal pits, I advised him by letter not to sink where he was sinking, that it was foolish and foolhardy and a loss of money, (and resulted in a loss to us of over two thousand dollars, the sinking of the pit placed where there was every fault to be looked for, and they found the fault and lost about two thousand dollars—it was in the line of the fault that was known to run through there—it had been tested in a number of places before it got there—I tried to warn him but he said in reply I was trying to obstruct the workings of the Company and so I did no more). In 1895 in regard to the sale of the property I was not consulted as to the price, and knew nothing of what the price he was to receive was until after the sale, although I was a Director. When he made this arrangement with me in 1894 after he displaced Mr. Chipley he wanted me to become a Director again and elected me a Director, and I took part as a Director, but we had very few meetings and no business was ever transacted at any

Board except mere formal business, outside of the meeting that he had in August when he issued the bonds and outside of the Crown Coal and Tow Company when he settled with me. Other meetings were all formal. In 1895 at the sale I had transferred? I will say, before all of my stock to Mr. Charles W. Thomas, excepting one share. Mr. Charles W. Thomas having saved me and put up something over three thousand dollars to take up these judgments
422 and executions that Mr. Leathe had against my property. I transferred to him my stock—that evidence is in—I only want to relate this to get to the point I want to make. The sale took place without my being present or without anybody being there representing me, excepting as to the one items of the bonds. The representation of Mr. Charles W. Thomas at the meeting was limited by me, especially in writing to him, to the question of the settlement of the bonds that I had given to me at the meeting of March the tenth, 1894, for the property of the old Crown Coal Company—five thousand dollars in bonds which were directed to be given to me by the Company and which Mr. Leathe stopped by bringing suits upon some of the notes in judgment here now in this case in which he sues, and he garnished them in the hands of the Trust Company contrary to his expressed agreement not to. That agreement was all that Mr. Charles W. Thomas had to do for me, excepting the part that related to my wife's land, and for those two considerations I was willing to take this agreement and relegate myself back, according to the agreement, to my suit aga-nst the Crown Coal and Tow Company for the proportion of the property that had been transferred to them by the old Company. I sent Mr. Taylor to him as soon as he had sold out, or shortly after, authorizing Mr. Taylor to say to him that upon a settlement of our affairs I would knock off thirty thousand dollars to get it settled. I knew from Mr. Taylor that he wouldn't listen to any settlement. No settlement could ever be made with him for anything, and of necessity these suits were necessarily brought to compel him to satisfy just demands against him, all of which up to this date have been determined by the Courts to be just.

Now all of this litigation was due to Mr. Leathe's refusal to carry out the plain undisputed contracts—undisputed by anybody except himself. All of the losses the Coal Company has incurred are due to the fact of the control of Mr. Leathe and his utter want of knowledge of the affairs of that kind of a Company, the manner of
423 carrying on the business and his refusal to permit anybody else to carry it on in the proper way. That is all I believe I care to say.

Cross-examination.

(Mr. KOERNER:)

Q. Was there any record kept of the meeting of March 25th, 1893, of which you have spoken several times?

A. Yes, sir not of these affairs that I have spoken of.

Q. Can you tell me why part of the proceedings there were reduced to writing and a great part not?

A. This matter that I speak of was merely a matter of the conduct

of the business. That was all. It was no matter that would go necessarily upon the records, and yet still, perhaps it ought to have been put upon the records, but it was not—neither the agreement about our property nor the agreement about who should conduct the coal business, neither one was put in the records—in fact I di-n't think of it at that time nor I don't think anybody else did. We all talked of this matter and agreed on it in that way.

Q. Well, was Mr. Chipley there?

A. Mr. Chipley was there

Q. Did he take part in those agreements?

A. He took part in everything—we all did in fact—well, of course, some were spokesmen, some were not. I don't think Taylor said much nor Mr. Adams.

Q. Did Mr. Leathe say much?

A. He didn't say a great deal. Mr. Holmes was looking after his interests and Mr. Adams' interests there, and in regard to this, though, he did. We talked with him about the conduct of the coal business more than we did to anybody else because we had elected Mr. Chipley president of the Coal Company and knowing——

Q. Well, then, you say that the agreement was that Adams and Taylor were to conduct the business, and Adams was to be president——

424 A. No, the first intention was to elect Mr. Adams president but before this agreement was made we had elected Mr. Chipley president, at the request of Mr. Leathe, because Leathe said that Mr. Chipley could assist him in floating the bonds of the Companies. That was the idea, and thereupon, at Mr. Leathe's request and desire, we elected Chipley, and then, in order to control the coal business, we wanted this agreement made, that Mr. Adams and Taylor should control the coal business; and that was agreed to.

Q. That agreement, however, was neither incorporated into the record of the procedings nor reduced to writing?

A. No, neither one nor the other.

Q. The same as to the new company being called upon to collect the outstanding accounts of the old Company and pay it over to the former stockholders. That was not reduced to writing?

A. That was not reduced to writing at that time, but it was recognized afterwards on March 1st, 1894, by the Company when this agreement was made between Leathe and myself which I have detailed here, why, that thing was a part of the record of March 1st, 1894. It was then put upon the records. Those records have been introduced.

Q. Well, all you claimed as your proportion of what the Crown Coal and Tow Company was to collect you have recovered by suit against the Crown Coal and Tow Company.

A. All that has been recovered and is in one of the cases that Leathe fought to the Supreme Court.

Q. On that you make no claim against Mr. Leathe in this case?

A. No, my claim has nothing except what arises out of the railroads. Nothing here arising out of the Crown Coal Company's transactions at all.

Q. You are speaking now in this examination particularly of your claim arising out of the alleged contract of January, 1893?

A. No, sir, never such contract made.

Q. I know, so you have stated, but this account was ren-
425 dered on the theory of that contract?

A. No, sir.

Q. This account rendered by Leathe?

A. No, sir, my claim is that he has owed to me ever since the deed was transferred to him.

Q. Well, that is to say that, under the pleadings in this case, you claim in case that contract should be established, that this account now rendered is too large, that your, that you are attaching that account?

A. I will attack the account, I think, but this is a question for argument, you know. Of course I have filed a number of pleas here, as stated before, such as the evidence shows I am entitled to recover and I expect to recover.

Q. Well, what do you claim, Mr. Thomas? Under that pleading—that is to what extent do you claim that Mr. Leathe would have to account from the proceeds of that sale?

A. Well, under that pleading?

Q. Yes, sir.

A. I would claim that Mr. Leathe, if his contract of January 24th is the governing contract, under that, now, that he would have a right to charge up all of the legitimate and proper expenditures made by him in the railroad company alone, not in the coal company, the coal company being on an entirely different basis and not connected with the contract of January 24th at all, and, having sold it all in a lump, why, of course that would be a question for argument as to what the amount would be.

Q. What do you claim, now, in the case that contract was in force, that he would be entitled first, to what he expended in building the railroad, and there was a surplus—now by what right do you claim in that surplus?

A. I claim the right in that surplus to the amount that has
426 been found to be due me *form* the railroad in a case which he defended, less of course, the amount of these judgments.

Q. Now, Mr. Thomas, leaving out for a moment, as that is a matter of argument, as to how far Mr. Leathe would be bound by that judgment, how much do you claim to have expended up to the time of the contract of January 24th, 1893?

A. Over fifty three thousand dollars—not expended, but value of the work and the expenditures.

Q. Value of your work and the expenditures?

A. According to the statement rendered him at that time.

Q. I believe I have that statement here. That is to say, with interest, of course, that——

A. Of course that is what it amounted to.

Q. Is that the statement (handing paper to witness)?

A. I had one one time in Mr. Leathe's handwriting. This is in

mine, and the one I had in Leathe's handwriting I gave to Mr. Holmes.

Q. Well, Leathe's would only be a copy of this?

A. Yes, sir. I only wanted the one in Leathe's handwriting for the purpose of showing that he had examined it. He said in the first trial that he didn't pay any attention to it, and as a mere matter of form I wanted to show that he had examined it thoroughly —in fact he went over it and corrected one or two mistakes in addition that I made in it. Now this (referring to the papers handed him) is the first thing that I rendered to Mr. Leathe or to Mr. Chipley.

Q. Well, that is the account, then, that you claim you would be entitled to?

A. Oh, no.

Q. Well, it is fifty three thousand dollars?

A. No, no, no, the amount paid by Thomas here, $50,368.90 included some items that I marked, as the explanation shows—it is explained here—shows that which was not paid but were credited to me if I had to pay them. The totally corrected thing that I filed in the case amounted to $48,000.00. There is another thing
427 about this that you will see, the grading. It was in the case and I have got a copy here filed. The grading, as you will notice here, is estimated, you know, part or portion of it—I don't believe you have that grading account here.

Q. But that note which was executed to you by the Belleville and St. Louis Railway is for this amount?

A. No, it was $53,000 and something. It was for this $48,873.82 with the correction I made in it, that were marked on the paper, and the interest on that amount. At the time I made this as explained in it, the grading was estimated, certain portions of the grading, and was not known either by the engineer or myself, but at the time they made me this note in August, 1893—at the time this note was made—the calculations had been made.

Q. Then it was for about $48,000.00?

A. Yes, about $48,000.00 principal.

Q. And about $5,000.00 interest?

A. Well, I can tell you exactly of you want to know it. (Takes paper out of valise.) Here is the amount, which, with the charges, makes a total of $2,107.32 less than that amount.

Q. Is that paper, which corresponds to page 85 of the record of the case of the Belleville and St. Louis Railroad Company, for the use of Edward L. Thomas, versus Samuel H. Leathe, is it in evidence?

A. Yes, sir, in evidence.

Q. And the balance to make up the $53,000 of the judgment was interest?

A. Yes, sir.

Q. Well, now, before going into that I want to ask you a question which occurred to me. You spoke of Mr. Leathe having refused to pay the mortgages on your wife's farm held by Phillip M. Gundlach, Anthony Pfeiffer and Alexander Pfeiffer?

A. Yes sir.

Q. They have been paid, have they not?

A. Well, he purchased in his individual name and took an
428 assignment of the certificates of purchase on the sale made by Alexander and Tony Pfeiffer, and then purchased the decree in the case of Phillip M. Gunlach against all of us, and when this settlement was made in St. Louis I insisted before I would give up the bonds that he execute me a release deed for those claims, including one or two others that he had procured from suits that had been brought against me.

Q. Then you and your wife have received—this matter has been paid?

A. Oh, yes, now, after two or three years.

Q. Now, is this the paper that you sent Mr. Leathe?

A. I am not so certain about that.

Q. Or a copy of it?

A. I am not so certain about that. I think it is. I think the one that was corrected—not this correction here, but the one I think was right, was addressed to—I think it stated at the head "Account to Chipley and Leathe." That is my recollection of it.

Q. Well, however, this paper is of your handwriting?

A. Yes, this is substantially the same thing. There might be some slight alterations. This other at the time of the making of the note was a complete correction of it

Paper introduced in evidence and marked -xhibit "A" to the testimony of Edward L. Thomas.

Q. Now, in "Re-capitulation" it appears, on this paper marked Exhibit "A" "Paid by Edward L. Thomas $50,386.90." How much of that amount, Mr. Thomas, did you actually pay?

A. The explanation is given all the way along there as to those amounts credited to me as if I had paid it, on every account. The amount paid is put down on every separate account there, and this is simply a re-capitulation of those accounts, and there is an explanation of the amounts I expended at the foot of them. Let me show you. For instance, now here in the acocount of "Organization. Paid by Captain W. A. Adams $4.00; paid by Edward L. Thomas $2,283.85."

Q. Did you pay that?

429 A. Yes, sir. I expended that in organization—well, yes,—excepting there was one or two, I don't know that it is in this —yes, there is one item here of $625.00 that I had not paid but was charged to me and I have since paid it. That was the item of engraving these bonds that I spoke of here, that Mr. Leathe agreed to talk over.

Q. You have paid that since?

A. Oh, yes, have paid that since. Now then, that is the organization account. Now the next account is "Sundries," that is, expense. And the organization account includes "Engraving bonds, $745.00," for one hundred and fifty thousand dollars' worth of first issue, and "Trustee's fees, $500.00;" which was all paid by me.

Q. Who did you pay that to?

A. To the Marcantile Trust Company of New York, and the $750.00 to the New York Bank Note Company.

Q. That is included in the $625.00 item?

A. No. Then I wanted to issue, or make a five hundred thousand dollar issue, and, *and* got him to make a contract to do it for much less, and he had gone to the extend of expending as he claims, $625.00. Then I stopped him from going on, pending these negotiations. Then that first account—

Q. That first account of $2,287.85 was all paid by you?

A. That was all practically paid by me, and is now—that is, I was responsible for all these items personally. Now all these items were all paid *were all paid* by me, except one item which I have not paid, but for which I am responsible—$1,600.00 to Sullivan and Townsend. Mr. Townsend is the one here building this road and Mr. Sullivan is an attorney in St. Louis. I procured his assistance.

Q. Well, that has not been paid?

A. Not been paid, but I am personally responsible for that to them.

Q. In the shape of writing?

A. A written contract, yes, sir. Not in the shape of a note, but a written contract.

Q. Well, what did they do?

430 A. Well, Mr. Townsend went to considerable expense going backward and forward, and had a man procured for me to take this railroad up. I agreed with them that if they would get a man, what ever expense they would be at and loss of time and so forth I would pay, and we concluded upon the amount at the time and I agreed to pay them $1,000.00.

Q. When was that agreement made?

A. Made in the fall of '91, in the fall after the death of Captain Adams.

Q. You find that under what heading, there, Mr. Thomas?

A. That is under the head of "Sundries." As I say, this has all been gone into in the original case which Mr. Leathe defended.

Q. That "Sundries" account begins with "Expense to St. Louis," does it not?

A. Yes, sir?

Q. Does that mean railroad fare?

A. Oh, it means all those necessary expenses of going down to St. Louis perhaps a hundred times a year, fifty or a hundred times. Not only railroad fare but necessary expenses that a man goes into in traveling around St. Louis. I presume I spent perhaps twice that much.

Q. The next *itme* is "Assistance" what do you mean by that?

A. I procured Mr. McConaughy to assist me and paid him for that, paid his $250.00—well, he assisted me in a nu-ber of things connected with the road, and I perhaps paid him more than a thousand dollars

Q. "Livery $152.00." Is that at Belleville?

A. Yes—and East St. Louis together—I think more at East St. Louis than here.

Q. Expense to St. Louis and East St. Louis $262.00?"

A. In 1890.

Q. Those than are travelling expenses which you charged?

A. Yes, sir, all those are expenses for seeing people. I went to Chicago, to Springfield twice, to New York, went to Philadelphia.

431 Q. "Securing ordinance." Was that at Belleville?

A. That was at Belleville. There was no money paid to anybody that wasn't legitimate; no money paid to any alderman.

Q. What do you mean by "Churchhill contract"?

A. That was a contract similar to the — of Townsend's. I didn't pay that $1500. I gave him my note for $1500.00, and afterwards settled with him and gave him a note for $500.00, because he transferred that note to Mr. Shapleigh. Shapleigh sued me on it and Leathe bought the judgment and levied on my property.

Q. That cost you $500.00?

A. Yes, sir, but at the time I made this statement I hadn't settled with him, had made no arrangement with Churchill then. He sold the judgment to Leathe, Leathe levied on my stock and compelled me to go around and get somebody to bid it in—in other words, he "pursued" me.

Q. Now again, "Board of horse." Was that your horse?

A. Yes, sir, I used the horse—two of them—used them up completely—and two buggies.

Q. Well, you charge here for the horses and for their board?

A. Yes, sir, charge the whole thing to the Railroad Company, being part of the legitimate expense of going on with the railroad and doing the work.

Q. Now down below we find "Petition"?

A. That was to get a petition for the street railway here, for right of way over the streets, and I had to pay somebody to go around and get the names of some of the front owners.

Q. Did you pay $200.00 for that?

A. Paid more.

Q. And then "Ordina-ce Belleville $450.00," again?

A. I paid McConaughy for that—paid him more—more than the items that are in there—he came to my office and I asked him if that would satisfy him and if he thought it was worth that,

432 and I gave him a thousand dollars for all that work instead of what I have got here.

Q. When did you pay that?

A. December, 1895.

Q. Did that include a good many other services?

A. No, not for me; he did nothing for me except in the railroad matter.

Q. Now, then, we come to "Right of way,"—"To St. Louis, Alton and Terre Haute Railroad $3,100.00," did you pay that?

A. No, sir.

Q. Captain Adams paid that?

A. Captain Adams paid it.

Q. "James Dunn, $500.00"?

A. Captain Adams paid it.
Q. "Walter and Mary Gowans, $200.00"?
A. Captain Adams paid it.
Q. "Joseph Touchette, $350.00"?
A. Captain Adams paid it.
Q. "Joseph Beswick and wife, $1,000.00"?
A. Captain Adams paid that.
Q. "Oliver Brouilette, $1,000.00"?
A. Captain Adams paid it.
Q. "Wilhelmina Roemig, $300.00"?
A. Captain Adams paid it.
Q. "Andrew Touchette, $20.00"?
A. I paid that.
Q. E. and S. McDonald, $360.00"?
A. I am not sure now whether I paid that or Captain Adams. My impression, however, is that Captain Adams paid that. "William Lapere" I think I paid that. "Thomas Burke for Donnelly heirs," I paid that. "Alexander Touchette, $20.00," I paid that. "August Schmidt, $500.00," Captain Adams paid $450.00 and I paid $50.00.
Q. "Mrs. A. Ehrstein, $50.00"?
A. I paid it.
433 Q. "William Lapere, $20.00"?
A. I paid it.
Q. "Uen Atchison, $425.00"?
A. I paid it.
Q. "George Merod, $35.00"?
A. I paid it.
Q. "George Shirod, $70.00"?
A. I paid that. The items are divided there showing that Captain Adams paid six thousand nine hundred and twenty dollars and I paid one thousand two hundred and thirty dollars.
Q. Now, "Contracts graded." "Alexander Forst, $700.00." Who paid that?
A. Nobody paid that. It never was paid by anybody.
Q. Does that apply to all of these items?
A. Applies to every one of these items until you get down to (under the head of "Contracts graded")—"This must be credited to Thomas in the account or paid by Company. *See letter.*" The letter explained that they were contracts to take the coal, and if we did take the coal we were not to pay for it by contracts for these amounts, and if we didn't take it we have to pay for it.
Q. And these form part of the notes, do they?
A. Oh, no, form no part of the notes; no sir.
Q. Now comes an item under "Coal," 1890. A hundred and sixty acres at $60.00, $9600.00, what coal was that?
A. Phillips' coal. That was bought since that by Mr. Leathe. It is all explained below there, if you will read it.
Q. Well, this amount, $8,172.00 has been credited to you in this account?
A. Not a cent, no sir. Not a dollar. It is explained below here. Captain Adams purchased the 160 acres of coal land and put it in

my name and I gave a mortgage for the deferred payment. He paid $2400.00 on it, which left $7200.00 and that amount I gave a mortgage on and at the time it was due from me to these parties, as stated below here, and when we made the arrangement with Mr.
434 Leathe, Mr. Leathe took that off, gave his own mortgage, paid one-third of it I think to the heirs, and then charged me with the interest and took my note for it and sued me on it.

Q. Then your claim comes under the "Construction Account"?

A. Yes, sir, not a dollar of this coal business is in it, although there ought to have been a thousand and fifty dollars in it. I didn't suppose Mr. Leathe would do that, but he did it. There is a land account here before the construction account.

Q. Well, the land account, is there any of that in the note?

A. Yes, sir, $160.00, according to this account here (referring to Exhibit "A"). That was $160.00 due me on transactions and was included in the note. The whole thing is explained here.

Q. Of this construction account, how much money did you pay out on that?

A. I paid all of the expenses, cost of grading it—I can't say what the amount is, but it is thousands and thousands of dollars. We were grading from March, 1891, until December, 1893, doing heavy grading; running fifteen to twenty teams at a time—running ten all the time—and fifteen to twenty men. All those expenses I paid cash, and the estimated grading at thirteen cents a yard, that was the contract I had with Captain Adams for the grading up to the south east corner of this tract of land owned by my wife, and he has paid on that $9423.00; our contract was for thirteen cents up to that far.

Q. Captain Adams paid $9,423.00?

A. To us on grading at thirteen cents a yard. My contract with him was at thirteen cents a yard. We had made a special contract with him. He agreed to it—and the whole Company agreed to it long before Mr. Leathe came into it. It was all agreed on the outside by myself and Captain Adams as long as he lived, nothing said to Leathe about it afterwards by me.

Q. These items to engineers, did you pay them, or Captain Adams?

A. Captain Adams paid some of that expense included in the grading account and the rest of it I paid since his death. I didn't
435 pay anything before his death.

Q. None of this grading account was paid before his death?

A. Yes, sir, $9,423.00.

Q. He paid that?

A. Yes, sir, he paid that.

Q. Now, how much did you pay?

A. At that time?

Q. Well, any time?

A. Well, I paid all the expenses of the grading. I paid for all the teams for all the supplies, for the tools, harness, horses and work done as we went along; paid all the expenses of the grading this number of yards that is mentioned here, and that in general amounted to, say, close on to ten cents a yard, the actual expense of

doing it, besides purchasing the teams and outfits. I purchased of Messrs. Wolfert and Company here over three thousand dollars worth of stock and paid them all for it excepting some eleven hundred dollars for which I was responsible, and they took the property and sold it under mortgage because I couldn't meet it. The property went for it—contrary, by the way, to another agreement Mr. Leathe made with me, a special agreement.

Q. I want to get how much money you expended?

A. Well, Mr. Koerner, I'll tell you what I expended in the railroad itself. I didn't get it all down there, but during the time that I was building that road, from 1890 to 1893, I borrowed $52,000.00—and I made on an average of two or three thousand dollars a year in those years, those three years, on old business that I had. I lived off of that money I borrowed and that money I made on the rent of my wife's farm, $800.00 a year; lived economically; don't think I spent an average of $100.00 a month for living, and I therefore say that I spent in the railroad over $50,000.00 altogether.

Q. Who did you borrow that money from?

A. I borrowed it from the bank, from John Kloess, from Philip Gundlach, from Lengfelder, from Peter Voellinger, from
436 Jacob Voellinger—from numerous and lots of friends of mine—the Savings Bank—in fact I was indebted all over. I was head over heels in debt—but I had credit.

Q. Well, this money that you borrowed from Gundlach was on your wife's farm?

A. Certainly.

Q. That has been paid?

A. Every cent of this money that I borrowed at that time has been repaid.

Q. I say repaid to you?

A. That was paid under this agreement, that Mr. Leathe went and took up the decree, and when he wanted these bonds it had been his duty to pay it before he released the property from that thing—practically amounting to a payment.

Q. The amount that you had borrowed from the First National Bank was paid from the proceeds of the sale of these properties to Mr. Gary?

A. No, sir.

Q. From the fifty thousand dollars which was your——

A. No, sir, I specially declined, as far as I was concerned, to have anything to do with that, and insisted that my brother should do nothing with it. But he saw fit when he got over there to reduce his price and leave Mr. Gary or Mr. Leathe or somebody else to pay that. There had been a judgment given or recovered against Mr. Leathe for non-compliance with his contract—he had refused to comply with the contract made with my wife, the bank and me—and in that arrangement over there, as I was informed, I don't know anything about it, my brother gave a receipt (which is here in evidence) for $42,000.00 and some hundred dollars, which would, if added to the amount of that judgment that was against Mr. Leathe, make the $50,000.00.

Q. At all events it was paid and not paid by you——

437 A. Paid and not by me. My brother told me how it was. I objected to it in writing.

Q. Now, you also borrowed some money from Churchill?

A. No, I told you—oh, Samuel H. Churchill, another one, yes, sir.

Q. That is included in your expenditure?

A. No, sir, it is not included.

Q. Well, at all events you borrowed some money from Churchill for your use?

A. I borrowed the money that I used, yes, sir.

Q. Now, that amount has been repaid?

A. By me?

Q. You got that money from Mr. Leathe, did you not?

A. No, sir.

Q. Isn't it a fact that Mr. Leathe bought the Churchill mortgage or the certificate of purchase?

A. Churchill foreclosed the mortgage—Mr. Leathe declined under his agreement to pay that mortgage, as he had agreed to not let it be foreclosed, he purchased the certificate of purchase. When the time of redemption ran out I confessed judgment to Mr. Gundlach and Mr. Gundlach bought it and paid it back to Mr. Leathe, through the Sheriff, and Leathe got the money. I gave a mortgage on the property to Mr. Gundlach and he holds it yet to-day for that very thing.

Q. Now, wait a moment. That same land was afterwards taken by the Railroad Company?

A. Part of it.

Q. And nineteen hundred dollars——

A. Certainly they had to condemn. He had let it go, contrary to his agreement, and they had to condemn across there, after Mr. Churchill made us all parties and got a title to it, and I being a party and having been a grantee in the first instance, my creditors were entitled to redeem after the first twelve months had transpired, though the only party that could redeem it of course was the Belleville City Railway Company. But Mr. Leathe wouldn't do it

438 and so I confessed to Mr. Gundlach after the first twelve months had expired, and he afterwards redeemed it and I gave him——

Q. The purchase of this land was originally for the Railroad Company?

A. I purchased it in order to get a right of way through it.

Q. And charged it to the Railroad Company?

A. No, sir, not charged to the Railroad Company—the land was bought and everything was due me for $160.00—never charged anything for that—there is the land account. I purchased the property because I had to change my route, and in purchasing this property I borrowed the money from Alexander Pfeiffer to do it, and then I got him to make a private arrangement with me by which I cleared this off, and then I borrowed $3,000.00 from Mr. Samuel Churchill afterwards.

Q. Who did you buy this land from?

A. Oliver Brouilette.

Q. For $3,060.00?
A. Yes, sir.
Q. And the railroad company paid $1900.00——
A. They paid $1900.00 for the right of way.
Q. For part of that same land?
A. One hundred and fifty feet. They paid that to Mr. Gundlach, after he acquired the title in it. Mr. Leathe refused to do what he had agreed to do, in fact he went so far as to let the land be sold for taxes, and took a title in the name of his son and claimed that very condemnation money. I had to beat out that tax title before the County Judge.
Q. Now, you have stated the "grading is here charged as having been paid by E. L. Thomas. The amount is due him, and he has a contract with Mr. Boling, he must account to him."
A. Certainly.
Q. Then Boling's claim is included in this suit?
A. He has no claim except through me, as I told Holder,
439 and that is the reason they dismissed that suit.
Q. Boling's claim is included in the judgment which you recovered against the Belleville and St. Louis Railway Company?
A. Every bit of it. There is nobody has any claim against this railroad, any of these creditors or workers on the road, not a single, solitary one; it is all against me.
Q. Now, that was the entire amount due for grading at the time, was the amount due to Boling?
A. As I stated—estimated what was due to Boling at that time—we didn't have it calculated—it was afterwards changed and was less. You can see by turning over there to corrections. When it was calculated it was changed to less. You can see the corrections I made there when this evidence was given.
Q. The original construction account then showed "Paid by E. L. Thomas, $39,450.05."
A. That would be the amount under the statement—that doesn't show what I paid. It showed what was coming to me if this was a correct statement of the amount of yards.
Q. It is paid——
A. I know, I explained that. It says "Grading is here charged as having been paid by E. L. Thomas. The amount is due him, and as he has a contract with Mr. Boling he must account to him. Expenses of grading have all been borne by Thomas, and Company owes nothing outside but $3,000.00, which cannot be collected under contract until road is completed or bonds sold." That was the $3,000.00 mentioned in the letter that I borrowed from these gentlemen to go on with the business.
Q. Have you paid Boling this $6,000.00?
A. The $6,000.00 that was to go to him was not clear. We had a joint indebtedness amounting to some considerable, and that I paid, and then I paid him in the neighborhood of $3,000.00 cash.
Q. Well, you paid him all that was due him?
440 A. No, he has some coming yet, but my contract with him was that he wasn't to get any of it until I could collect it from

the Railroad Company and I advanced him that, as expressly stated in writing. It was merely an advancement to him.

Q. What you paid him you paid after the sale?

A. After the sale, certainly. I paid him in '95, in December or the early part of January, '96, somewhere along there—in fact, I paid my debts out of the first money I could get hold of to the extent of the money, as far as it would go.

Q. Well, as regards the amount stated here for which "Thomas is responsible $18,772.00," that doesn't exist any more, does it?

A. That exists, as I say, in regard to this amount to Townsend and this amount to Boling.

Q. Well, this amount to Boling, you know——

A. That is included in this $18,772.00 for which I am responsible—Oh, no, that amoun- of $18,772.00 is the right of way business. That was put under there, you can see.

Q. Well, that responsibility doesn't exist now?

A. That doesn't exist now at all, nothing of that kind is in the account.

Q. Well, the Townsend matter and the Boling matter, they are included in this judgment?

A. Yes, sir, in this judgment. In fact everything as far as I was concerned which I had gone into in this road business—I may say everything excepting what was due to the heirs of Captain Adams and myself included in this judgment.

Q. Also the $1500.00 of Churchill's is included in that judgment, of which you say you afterwards paid $500.00?

A. That is the other Churchill, $500.00, yes, sir. Well, it cost me a good deal more than that, but that was the original amount of the suit and cost of sale and so forth—run up on me—cost me some six hundred odd dollars.

Q. Now, were you the contractor to build this Belleville
441 and St. Louis Railway?

A. I had an arrangement with Captain Adams and with everybody, and it is recorded in the Belleville and St. Louis minutes, that I was to go on and construct, the bonds were given to me as collateral for the work, and what money put in by Captain Adams his heirs got bonds for that after his death.

Q. Did you make a construction contract with the Company?

A. Yes, sir.

Q. Is this it? (handing paper to witness).

A. No, sir, this is the first one made. When Captain Adams went in that was abrogated; nothing done with it.

Q. That is your signature?

A. Yes, sir. I made this contract when the thing was first organized in 1889. Nothing was ever done under this.

Q. That is the signature of the President of the Company, John S. Hill?

A. Yes, sir, that is correct. And I afterwards assigned it to William S. Adams, and then I made another contract with the Company after Captain Adams died. I think I have a copy of the contract I made, but I haven't got the original. Mr. Hill had it and what

became of it I don't know. I made a contract after Captain Adams died, which was the one in force when this work was done.

Contract offered in evidence and marked Exhibit "B" to the testimony of Edward L. Thomas.

(Witness continuing:) Captain Ad*mas* made a contract between him and I to do the grading, as I said, for thirteen cents a yard up to that point. He was to pay the money as we needed it for the work. When he got the money that he contemplated getting, why, he would pay the price. We would go on and do the work and take only from him such money as we actually needed to pay off our hands and pay the expenses.

Q. Well, then this contract was assigned to Captain Adams?

A. It was never acted on by anybody.

442 Q. Well, how could Captain Adams make an agreement to pay you so and so much for the grading? Captain Adams wasn't the Company?

A. Captain Adams went in and he was made the main man in the Company, at the time of his going in—he went in in August, 1890, about that time, and it was agreed then, and, I think, put of record, that I should have *for* $6,000.00 for my service up to that time, and we were then to go on.

Q. This contract was assigned to Captain Adams on the second of September, 1890?

A. That was about the time he went in.

Q. Had you done any work before that?

A. No grading. The only work I had done was this preliminary work, but no grading at all. Nothing but getting the right of way—that is, what I could—and bringing suit against the St. Louis, Alton and Terre Haute for right of way down in the bottom. All preliminary work.

Q. Well, you were to do all that under the contract?

A. Yes, sir, I was to build the road. But when we went in with Captain Adams we changed that.

Q. You and Adams changed that?

A. Yes, sir. Of course it was a Company then—we did most likely what he wanted done—of course, he advised with me and Taylor and Reis—we met them often and talked it over.

Q. I believe you have stated, and the record shows that your investment in the Crown Coal Company was $600.00?

A. Our original investment?

Q. Yours?

A. Yes, my original investment was $600.00, and then I bought out part of my brother's stock, $500.00 or a little over. But we had put all our earnings into the property for four or five years. That is what made the property valuable. Our original investment was only thirty nine hundred dollars altogether, except when we borrowed five thousand dollars from Captain Adams when he

443 went in with us to sink the new shaft and fit that up; and then we kept on putting in our profits. What we made went all into the thing to enhance its value—until the last year, about

1892. There we made considerable money. It required a good deal of capital to run it, and we had to do that.

Q. You have already recovered some seven thousand dollars from the Crown Coal and Tow Company?

A. The original decree was six thousand three hundred and some odd, that was the five thousand dollars in bonds.

Q. That represented the investment?

A. That represented the investment. That is what we made by our careful handling of the properties. They were very valuable properties. Money could have been made out of them with great ease by handling them properly. And they were more valuable when Leathe came in, because then we had the Western Coal and Tow Company business; they made a great deal of money on the river for years—quadrupled our business when they went in.

Q. And you say your stock in the railroad company was disposed of by yourself or assignee for fifty thousand dollars?

A. I assigned the stock, as I told you, in May, 1894, after these judgments were out against me and my brother had to take them all up. I assigned them to him and he disposed of it, contrary to my wishes—but he insisted on doing it and I didn't——

Q. Five thousand dollars was realized on it?

A. By him, I suppose you might say we, getting that judgment. Of course he owned in his own right twenty five thousand dollars of this property that I never had anything to do with.

Q. That is, you had something to do with it, it came from you?

A. Oh, no,—well, it came from me in our trade. In our trade, why, he was to get that, that's all. That is all explained.

Q. Well, he was to get that part of the amount that was assigned to you under the agreement?

A. Oh, no, never was assigned under any agreement. That was the agreed division of the stock on March 25th, and before
444 March 25th we agreed that was to be the division of the stock, of the amount that was in the first place agreed to be given, twenty five thousand dollars' worth of stock. In the instrument of January 24th, it was declared that the stock was to be delivered in a certain way mentioned in that instrument. That instrument was never carried out, and in getting the other charter it was determined that—Charles W. Thomas asked for twenty five thousand dollars' worth of stock in that charter, and Chipley and Leathe, as I have said before, insisted on having it, and insisted on my getting it, and refused to give any of their stock to get it, and in order to go on with the incorporation I had to surrender twenty five thousand dollars' worth of stock that was originally intended to belong to me if that contract had been entered into.

Q. Well, the stock was delivered by that contract, as a matter of fact?

A. No, sir; no, sir.

Q. It was the proportion——

A. No, I didn't know, I didn't get the twenty five thousand dollars. The contract had never been executed by them.

Q. That twenty five thousand went to Charles Thomas?

A. The twenty five thousand dollars, if the contract had been in force, went to my brother.

Q. Because Chipley and Leathe wouldn't give up any of theirs?

A. Yes, sir, and wouldn't go into the enterprise. And this contract—I think Mr. Holmes explains that thing in his evidence about they forced me to give up my stock. They played a game on me, that's all.

Q. Don't you want to modify that statement that I told you Mr. Leathe wanted to break you up?

A. No, I didn't make that statement. I said that I stated to you that he wanted to break me up and you stated that you had to do it if he insisted on it. I explained to you that you were doing it.

445 Q. What we were talking about was selling your stock under execution?

A. Getting these fellows to levy on my property. You went to Holder and the Bank and tried to purchase the judgment that Hamill had, and all that, and this judgment, and I had a conversation with you about it in which I complained to you that you were doing this and that Leathe wanted to break me up, and you said you had to do it because Leathe insisted on it.

Q. I am very sure that I never said that because I never heard Mr. Leathe say that to me.

A. Well, I heard it on the outside, and that is the reason I said it to you also.

Q. As early as the September term of 1893 you brought a number of suits against the Railroad Company and the Crown Coal and Tow Company, did you not?

A. Yes, I brought suit for vendor's lien against the Crown Coal and Tow Company, and then in myself and my wife's name I brought vendor's lien against the Belleville and St. Louis Railway Company at that time.

Q. Also a suit at law on that note?

A. Yes, that is the one I brought and gave him notice to defend and he filed a bill for injunction.

Q. And also Boling's?

A. I didn't bring that. I objected to that and told those parties that they couldn't recover in it and advised them to dismiss it, and they dismissed it.

Q. Well, they dismissed it later?

A. They dismissed it. I was against that suit all the time.

Q. Didn't you appear as counsel in it? Isn't your name signed to the petition?

A. I wasn't in the original, but there was an amendment filed—they asked me to be a party to the suit and I did it. It might possibly be I signed my name to it, but I tried to get them to dismiss it. And in the summer Taylor and Adams were wanting to

446 bring suit against Mr. Leathe and I persuaded them from doing it.

Q. I am not talking about those that were not brought but about those that were.

A. These three I brought practically to enforce a settlement of

my wife's affairs. That was the main object; endeavored to ascertain the amount that was due.

Q. Now, about that note that was given by the Belleville and St. Louis Railway Company to you, you had the control of that Company at that time, didn't you?

A. Well, Mr. Adams was with me in that as much as anybody, and Mr. Taylor was there too. I may say that I probably had practical control of it. They all looked to me to do those matters.

Q. If you said a note should be given to Edward L. Thomas, why——

A. Well, yes, I presume if I had said so, yes, sir.

Q. You were president of the Company?

A. I was, in fact they all looked to me to control all those affairs.

Q. You had on the books of the Company the majority of the stock?

A. Yes, sir, I held the stock for the purpose of making arrangements with people to get somebody to go in with me.

Q. You had, I believe, four hundred and ninety five shares, didn't you, practically?

A. Oh, I had four thousand nine hundred shares—five thousand shares—I had practically all of it. Although I didn't own it, yet I had it in my possession, by the consent of all the parties, for the purpose of using it or floating bonds.

Q. Well, you could control the action of the Company?

A. Yes, sir.

Q. And you did desire that the note should be given in that way?

A. Yes, sir, but I didn't recover on the note. I didn't recover any judgment on the note. ded the common counts and the Court refused to render judgm at on the note, and rendered judgment on the common counts.

Signature waived.

447

No. 3.

Samuel H. Leathe pages 1-34
Saml. Leathe " following
Lucien M. Chipley "

STATE OF ILLINOIS, *St. Clair County*, ss:

In the Circuit Court.

SAMUEL H. LEATHE,
vs.
EDWARD L. THOMAS.

Action of Debt.

To the said Edward L. Thomas, Defendant:

Please take notice that on the 30th day of January, 1899, the above named plaintiff will sue out of the Clerk's office of the Circuit Court of St. Clair County, Illinois, a *dedimus potestatum* or commis

sion, directed to Edgar R. Rombauer, of the City of St. Louis, State of Missouri, as commissioner, to take the depositions of Samuel H. Leathe, Samuel *H.* Leathe, Lucien M. Chipley, Bart S. Adams, James H. Waddock, residing in said City of St. Louis, in the State of Missouri, to be read in evidence on the trial of said cause, before the Referee, L. D. Turner, Esq., and pursuant to said *dedimus,* the plaintiff will, on said 30th day of January, A. D. 1899, commencing at the hour of eleven o'clock A. M., at the office of said Edgar R. Rombauer, in the Roe Building, on the south-west corner of Broadway and Pine streets, in the said City of St. Louis, State of Missouri, proceed to take the deposition of said witnesses upon interrogatories propounded said witnesses orally, when and where you may be present, and cross-examine said witnesses, if you shall see fit to do so.

S H. LEATHE,
By G. A. KOERNER,
His Attorney.

Received a true — of the within notice this Jany. 18, 1899.
DILL & WILDERMAN,
Att'ys for Deft.

448 STATE OF ILLINOIS, *St. Clair County, ss:*

The People of the State of Illinois to Edgar R. Rombauer, Esq., Greeting:

Whereas, It has been represented to us that Samuel H. Leathe, Samuel Leathe, Lucien M. Chipley, Bart S. Adams, and James H. Waddock, material witnesses in a certain cause now pending in our Circuit Court, in and for the County of St. Clair aforesaid, between Samuel H. Leathe, Plaintiff, and Edward L. Thomas, Defendant, and that the said witnesses reside at St. Louis, Missouri, Now, know ye, that we, in confidence of your prudence and fidelity, have appointed you Commissioner to examine said witnesses, and do therefore authorize and require you to cause the said witnesses to come before you on the 30th day of January, A. D. 1899, at Eleven o'clock in the forenoon of said day at the office of Edgar R. Rombauer, in the Roe Building, south-west corner of Broadway and Pine Streets, and diligently to examine the said witnesses, on the oath or affirmation of the said witnesses, by you first duly in that behalf administered, and faithfully to take the depositions of the said witnesses upon interrogatories to be propounded to the witnesses orally, both on the part of said plaintiff and of the said defendant, and the same, when thus taken, together with this Commission and the said interrogatories, to certify unto our said Circuit Court of St. Clair County, with the least possible delay.

Witness, Thomas May, Jr., Clerk of said Court, and the seal thereof, at Belleville in said County This 30th day of January A. D., 1899.

[SEAL.] THOMAS MAY, JR., *Clerk.*

Commissioner's fee, $43.70. Paid by plaintiff.

449 The depositions of Samuel H. Leathe and Samuel Leathe of the City of St. Louis, and the State of Missouri, witnesses of lawful age, produced, sworn and examined upon their corporeal oaths on the 30th and 31st days of January, in the year of our Lord one thousand, eight hundred and ninety-nine, at my office in the Roe Building, on the south-west corner of Broadway and Pine Streets, in the City of St. Louis, State of Missouri, by me, Edgar R. Rombauer, a Commissioner duly appointed by a *Dedimus Potestatum* or commission, issued out of the Clerk's office of the Circuit Court, of St. Clair County, in the State of Illinois, bearing teste in the name of Thomas May, Jr., Clerk of the said Circuit Court, with the seal of said Court affixed thereto, and to me directed as such commissioner for the examination of the said Samuel H. Leathe and said Samuel Leathe and others as witnesses in a certain suit, and matter in controversy now pending and undetermined in the said Circuit Court, wherein Samuel H. Leathe is plaintiff, and Edward L. Thomas is defendant, in behalf of the said plaintiff, as well as on the oral interrogatories of the defendant as on the oral interrogatories of the plaintiff.

Present: L. D. Turner, Esq., Referee, the plaintiff, Samuel H. Leathe, Esq., G. A. Koerner, Esq., counsel for plaintiff, and the defendant, Edward L. Thomas.

The said SAMUEL H. LEATHE, being first duly sworn by me, as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the defendant as the plaintiff, in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows:

Direct-examination by Mr. KOERNER:

Q. State your name.
A. Samuel A. Leathe.

At this point, by consent of counsel for plaintiff and defendant, I adjourned the further taking of these depositions until 11 A. M. January 31, 1899, then to be resumed at the same place.

EDGAR R. ROMBAUER,
Commissioner.

450 Pursuant to adjournment, as above stated, at 11 A. M. on January 31st, 1899, I resumed the taking of said depositions as follows:

Present: L. D. Turner, Esq., Referee, The Plaintiff, Samuel H. Leathe, G. A. Koerner, Esq., counsel for plaintiff, and the defendant, Edward L. Thomas, Esq.

Plaintiff's counsel offers in evidence the printed record of the case heard in the Circuit Court of the United States for the Southern District of Illinois, in which the Belleville and St. Louis Railway Company for use of Edward L. Thomas, was plaintiff, and Samuel H.

Leathe was defendant, subject to verification if there should be any errors, and the same is marked Exhibit "A" and hereto attached.

It is admitted as a fact by counsel for the defendant that the judgment therein shown was affirmed by the United States Court of Appeals, but the relevancy of the testimony is objected to.

Plaintiff's counsel introduces as evidence a contract dated January 24th, 1893, which is found printed on pages 85 and 86 of the record just introduced.

Plaintiff's counsel introduces as evidence from the stock book of the St. Louis, Belleville and Southern Railway Company, formerly called the Belleville City Railway Company, certain assignments of stock in that Company made by Mr. Leathe which are found on pages 186, 187 and 188 of the record just introduced.

Plaintiff's counsel introduces from the record and minute book of the Crown Coal and Tow Company certain transfers of stock made by Mr. Leathe which appear on page 206 of the record just introduced.

It is agreed that either party to the case may read from the record referred to such portions of the documentary evidence contained in the record of which the originals were produced and introduced.

451 SAMUEL H. LEATHE, on his oath states:

Direct examination resumed by Mr. KOERNER.

Q. State your place of Residence?
A. St. Louis.
Q. How long have you resided there?
A. Since 1856.
Q. Are you engaged in business in this city?
A. I have been.
Q. What business were you in here, mercantile business?
A. Mercantile business.
Q. You have now retired from active mercantile business, have you?
A. Yes, sir, I have not been in active mercantile business since 1882 in this city.
Q. Are you acquainted with Edward L. Thomas?
A. Slightly.
Q. You know Mr. Charles W. Thomas?
A. Yes, sir.
Q. And Mr. Chipley?
A. Yes, sir.
Q. How long have you known Mr. Chipley?
A. About six years.
Q. How long have you known the Messrs. Thomas?
A. Since 1893.
Q. Early in 1893?
A. Early in 1893.
Q. How did you become acquainted with them?
A. Through Mr. Chipley first.
Q. What business matters, if any, were discussed between you, who brought you together?

A. I believe the St. Louis Railway enterprise.
Q. What was that.
A. And coal enterprises.
Q. What were those enterprises?
A. Enterprises Mr. Thomas had embarked in and was endeavoring to get assistance for.
Q. Who first brought the matter to your attention?
A. L. M. Chipley.
Q. What is Mr. Chipley's business?
A. He was in this instance a promoter, and had been in others I believe, I had known him but a short time prior to that.
Q. Did you make the agreement on January 24th with Mr. Thomas, which is in evidence in this case?
A. I did.
Q. Was that agreement ever changed.
A. Never.
Q. Is it still in force between you and Mr. Thomas?
A. It is.
Q. Did you receive a letter from Mr. Thomas dated January 12th, 1893?
A. I did.

452 Plaintiff's counsel offers in evidence in connection with the testimony of the witness the letter referred to, which is found at pages 41 and 42 of the record introduced in evidence.

Q. After you received that letter and before and after the agreement of January, 24th, 1893, what did you do, if anything, in carrying out the agreement?
A. Before what day?
Q. After receiving the letter and making the agreement, during that time, early in 1893?
A. I made some examination of the property of the railway enterprise.
Q. Did you purchase any property in view of this agreement?
A. Yes, Sir.
Q. What kind of property did you purchase?
A. I purchased land and purchased property on the river in contemplation of the coal enterprise.
Q. Property on the river?
A. A tug boat, I purchased a tug boat.
Q. What boats did you purchase, do you recall them?
A. I forget the name of the boat now.
Q. Was it the Archie Parker?
A. The Archie Parker.
Q. Did you buy out any interest in other tugs?
A. Yes, sir, I bought an interest in the Baton Rouge Bell and the Susie Hazard, barges, &c.
Q. From whom did you purchase the interest?
A. A widow lady, I forget her name; I bought 2-3 interest in the concern.

Q. Well, were those tugs afterwards put into the enterprise and used in the business?

A. They were.

Q. Did you purchase a lot of frontage on the river?

A. Yes, sir, the lot known as the Schneider lot on the east bank of the river.

Q. Do you remember how much you paid for that?

A. $10,000.00.

Q. How much for the tugs?

A. $22,000. I think $22,100.

Q. That was for the interest?

A. The two-thirds interest.

Q. How much did you pay for the Archie Parker?

A. I think it was $6,000.

Q. That was in addition to the $22,000?

A. Yes, sir.

453 Q. Now, after making the agreement, did you do anything further in carrying out that agreement?

A. I did, I purchased other properties and did the work.

Q. What was the name of the railway company when you first became acquainted with it, that Mr. Thomas was interested in?

A. The Belleville and St. Louis, I believe.

Q. Do you remember whether there were any bonds out?

A. There were.

Q. How many were there?

A. The whole issue?

Q. Yes.

A. My recollection is $150,000.

Q. That is right. This agreement says, "The present bonds, $150,000. to be placed in the hands of Samuel H. Leathe to hold until other bonds were issued; "did you get those bonds?

A. Well, ultimately I believe I got them all after some difficulties.

Q. Did you advance the amount necessary to take up the four bonds then held by Mrs. Johnson, $2,000 with interest, and the Third National Bank, $750. with interest?

A. I did.

Q. Did you put up funds to carry on the enterprise?

A. I did.

Q. How far did you carry on the enterprise, say of the railroad

A. I carried it on to completion.

Q. The railroad between——

A. Between Belleville and East St. Louis.

Q. You put up all the funds that were required for that purpose?

A. All that were put up after I embarked in the enterprise.

Q. Did you put up any money in the coal enterprise in connection with that?

A. Yes, sir.

Q. What coal enterprise was there in connection with the railroad?

A. The mining of coal and the disposition of it.

Q. That was done through a different company, was it not, not through the railroad company?

A. No, it was a separate company known as the Crown Coal and Tow Company.

Q. When you first embarked in that matter it was known as what? Don't you recall that the name was changed to Crown Coal and Tow Company from its former name?

A. I do not recall what its name was prior to that.

454 Q. It was simply the Crown Coal Company?

A. That is my recollection, it was the Crown Coal Company simply because Tow was connected with another concern. There was another concern, the Western Coal and Tow Company, I think.

Q. When you say you built the railroad what was to be done to build it, how much of it, if anything had been done before you got hold of it?

A. Some rights of way had been procured and some grading had been done, but only a small portion of what had to be done. I had to purchase other rights of way and complete the work, regrade what had been graded, &c.

Q. Purchase the steel?

A. Purchase ties and rails and lay them.

Q. Equip*t* the road?

A. Equip the road.

Q. Under what arrangement did you put up this money?

A. Under the agreement of January 24, and only that.

Q. Do you know or recall of this $150,000. of bonds which this agreement states were to be placed in your hands, where you found $90,000?

A. In the Bank of Belleville.

Q. You had to make arrangements to get hold of them, did you?

A. I did.

Q. This portion that you built, what was it called at the time?

A. The work was originally commenced under its original name.

Q. After you took hold of it and began to build it, what was it called?

A. The name was changed to the Belleville City.

Q. The Belleville City Railway Company?

A. Yes, sir.

Q. You may state why that was done, and what part you had in doing it if any.

A. That was done at the instance of L. M. Chipley so far as my knowledge of it goes, that is my first knowledge.

Q. State what you know of it.

A. He stated to me that he had discovered a charter owned by Charles W. Thomas that he though- was very valuable, and gave us facilities that we could not obtain otherwise &c. And he furnished me a copy of the old charter which I looked over and submitted it to an attorney and lawyer for his opinion of it and so on.

455 Q. You did, you say?

A. I did.

Q. What lawyer?

A. Samuel N. Holliday.

Q. Of this city?

A. Yes, sir. He expressed some doubt as to its value and I had doubts before I presented it to him, still Mr. Chipley was very enthusiastic and sanguine that there was a great value in that charter, and he insisted that we ought to procure it, ought to have it, and undertook to obtain it and did obtain it under certain conditions.

Q. Then you proceeded afterwards to construct and equip the railroad under the charter of the Belleville City Railway Company?

A. I did.

Q. When did you first meet Mr. Charles W. Thomas, do you recall that?

A. My first meeting with Charles W. Thomas I should say was in his own office in Belleville a few days prior to the meeting of March 25th, two or three days, perhaps, prior to that meeting.

Q. Now what was, as you understood it, the purpose of the meeting of March 25th, 1893?

A. To change the name of the railroad and embark in the work to be performed under that charter.

Q. Now, what there was of right of way at that time and of grading was under the name of the Belleville and St. Louis Railway?

A. Yes, sir, the Belleville and St. Louis.

Q. Was anything said about getting that property into the Belleville City Railway Company?

A. Yes, sir, Charles W. Thomas undertook to make such a conveyance, to draw the papers that were necessary to change the enterprise into—so as to bring it into the new charter.

Q. Was there any other change except that made necessary by accepting the new charter contemplated between you and Mr. Thomas at that time.

A. No, sir.

Q. Either between you and Charles W. Thomas or between you and Edward L. Thomas?

A. No, there was no discussion with Charles W. Thomas, I had no acquaintance with him or discussion with him.

456 Q. As far as Edward was concerned, did you have any discussion that there was to be any change in your relations?

A. No, sir.

Q. Were you asked to pay anything to acquire this charter from Charles W. Thomas?

A. I never was directly, if there was any asking it was done through Mr. Chipley, I never was asked directly through either of the Thomases. Mr. Chipley said that Edward L. Thomas was not willing to stand the whole expense and thought it should be divided, but he said his opinion was that I should not do that, that Mr. Thomas would bear the expense of it; he undertook to obtain it in that way.

Q. Did you bear any part of the expense?

A. I did not.

Q. Did you agree to do so?

A. No, I objected to doing so, I refused to do so through Mr. Chipley.

Q. You consented that it should be substituted for the other charter?

A. Yes, sir, I saw no reason for the cost of doing it was so trifling that I thought it should not be considered.

Q. Then there was a meeting held in Belleville, March 25th, as the record shows?

A. There was.

Q. You were present at that meeting?

A. I was.

Q. Do you remember some of the other gentlemen who were present there?

A. Yes, sir, do you wish me to state them?

Q. Yes, will you state them?

A. Edward L. Thomas, Charles W. Thomas, Bart S. Adams, John T. Taylor, H. M. Needles was there for a little while, John M. Holmes was there, L. M. Chipley, my son, Samuel Leathe, was there, James M. Waddock, James M. I believe was his name.

Q. James H.?

A. James H.; Mr. Boling was there a little while, I don't remember his initials.

Q. What was done there about making some deeds?

A. Charles W. Thomas had a lot of papers written out. We had an understanding a day or two before that this was to be done, and he had prepared the papers for that purpose and submitted them at that meeting.

Q. Were they executed?

A. They were executed and a great deal of business was
457 done at that meeting, a great deal crowded into a short space of time.

Q. You say it was understood some days before that something was to be done?

A. Yes, sir, a day or two before.

Q. What was to be done?

A. This change of names was to take place and the papers—whatever papers were necessary, I suppose.

Q. For the transfer of the concern to the new name?

A. Yes, sir.

Q. Did you on that occasion make any agreement changing your liability in regard to the matter between you and Mr. Thomas from that of the agreement of January 24, 1893?

A. No, sir.

Q. Did you there agree that you would pay the existing debts of the Belleville and St. Louis Railway Company?

A. No, sir, I did not.

Q. Did you understand anybody as making that proposition to you?

A. No, sir, nobody did make such a proposition to me, no such proposition was mentioned.

Q. Was anything said that the papers which were passed there would change your liability?

A. Nothing of that kind was said or intimated.

Q. When did you first learn that such an idea existed in anybody's mind?

A. I don't know that I can say just when, I think it was in the instance of a suit, perhaps w-ere testimony was given in some case subsequent to that meeting.

Q. Several months after that?

A. A good while after that.

Q. Did you understand or anybody say to you at that time that by receiving the deed you obligated yourself to pay the debts of the St. Louis and Belleville Railway Company?

Defendant objects to the question as leading.

A. No such thing occurred in any conversation or any such intimation.

Q. Who prepared those deeds, resolutions &c., that were used on that occasion?

A. Charles W. Thomas.

458 Q. Now, who owned, as you understood it, the stock of the Belleville City Railway Company at that time before this meeting?

A. Charles W. Thomas.

Q. Was the Belleville City Railway Company anything except a paper organized?

A. That was as we understood it.

Q. It had no property that you knew of?

A. No, sir.

Q. Then did Charles W. Thomas assign the stock to you?

Defendant objects to the question as leading.

A. It was so assigned, I believe, nominally.

Q. What did you do with that stock?

A. Distributed it to the others under the agreement of January 24th, as set forth in that agreement or original proposition.

Q. You assigned it under the agreement of January 24th?

A. Yes, sir.

Q. In the manner therein stated?

A. Therein prescribed.

Q. Edward L. Thomas did not receive quite as much stock as stated in the agreement of January 24th?

A. It had been subsequently agreed, Mr. Chipley had stated to me that Mr. Thomas was to procure the charter from his brother and would pay for it with his own stock.

Q. What you assigned to Charles W. Thomas came from whom?

A. From his brother, Edward L. Thomas.

Q. It was by direction of the parties?

A. It was.

Q. What disposition was made of the stock of the Crown Coal and Tow Company in regard to its distribution?

A. The same method, the same plan of distribution was followed, the same proportion.

Q. Did you receive anything for the stock you transferred?
A. No, sir.
Q. Except such consideration as may lie in the contract of January 24th?
A. No other.
Q. That meeting of the Crown Coal Company and the Crown Coal and Tow Company, when did it occur, where this change of names took place, was it the same day as the other?
A. The same day as I remember.
Q. That was March 25th, 1893?
A. Yes, sir, the meeting of the Crown Coal Company, I
459 don't know whether it was held the same day or not. I did not attend that meeting, I don't know whether it was held that day or not. The record will show.
Q. Were those two enterprises, the Belleville City Railway Company and the Crown Coal and Tow Company carried on together?
A. They were, so contemplated under the agreement in the beginning.
Q. So carried out?
A. Yes, sir, some changes were made in something but they were essentially carried out under the same plan.
Q. Who figured out the proportion of stock, the right assignment, do you remember?
A. Well, I should say that Charles W. Thomas was one of the parties, whether there were others that figured on it or not, it was done under the cognizance of all interested.
Q. On what basis was the stock distributed?
A. Do you mean the relative basis?
Q. Yes, I mean what was the moving reason for distributing the stock in the particular proportion it was distributed?
A. It was contemplated under the agreement of January 24th, and so specified.
Q. Mr. Thomas wrote the transfers in the book?
A. Yes, sir.
Q. And you signed them?
A. Yes, sir, he wrote all that was written pretty much that day, I should say. Most of the writing had been done prior to our assembling.
Q. The road has since been completed, you said?
A. Yes, sir.
Q. Did anybody ever put up any money from the time of this agreement until the time it was completed except yourself?
A. No one.
Q. Did you ever have any conversation with Charles W. Thomas with regard to the Belleville City Railway charter prior to March 25th, 1893?
A. If I ever had any it was had only a day or two before, and I don't recall that I had any conversation with him about it. It is very possible and probable, perhaps, that it may have been spoken of, that he was proposing to draw up the papers.
Q. Did you ever state to Charles W. Thomas, in effect, that you

agreed that the capital stock of the Company must be fully
460 and absolutely paid up, that you agreed to pay the debt of the St. Louis and Belleville Railroad?

A. No, sir, I never did, no such suggestion was ever made.

Q. You never had any such conversation with Charles W. Thomas in which he or you made the statement?

A. No, nor with anybody else.

Q. Did you ever see those deeds and papers that were executed and the resolution passed on March 25th before that day?

A. Never, I saw very little of them on that day, I glanced them over hastily but I was informed they were simply matters of form for the carrying out of the propositions of the agreement.

Q. So informed by whom?

A. By Charles W. Thomas.

Q. Did you have confidence in Mr. Thomas' statement at the time?

A. I had.

Q. Did you ever have any discussion with Charles W. Thomas about the agreement of January 24th, 1893?

A. No, sir, never.

Q. Did he ever tell you it was necessary to abandon or set aside that agreement in case you took the charter of the Belleville and St. Louis Railroad?

A. No, sir.

Q. Or anything to that effect?

A. Nothing whatever, the subject never was mentioned.

Q. Did you ever show the agreement of January 24th to Charles W. Thomas?

A. I never showed it to him.

Q. He never saw it up to that time?

A. No, sir, I had it in my possession and nobody ever saw it, he could not have seen it, there was no copy of it made until a long time after that meeting.

Q. Something has been said about your not signing the agreement; state about that: did you sign it?

A. I never was asked to sign it. It was submitted to me in its form signed by Edward L. Thomas, Bart S. Adams and left with me for consideration.

Q. You signed it later?

A. Yes, sir, I was not asked to sign, I expected to sign it if necessary.

Q. Was there anything said to you by Edward Thomas about signing it?

461 A. Mr. Edward L. Thomas at a meeting, either March 25th or a subsequent one, I would not state now without refreshing my memory from documents, whether it was meeting of the 25th or a subsequent one, my memory is it was a subsequent meeting, made the remark that he did not know that Mr. Leathe had signed the contract then—it must have been a subsequent meeting, I think it was—and I made answer to it—he didn't ask me the question but he made such a speech that he did not know whether

Mr. Leathe had signed the contract, and I said, "Haven't I been acting under it? Ain't I working under that agreement?" And nothing was said in reply.

Q. You have stated you always did act under it?

A. I was acting under it from the first, all the work I did was done under it, and the work I did prior was in contemplation that if such an agreement was made it would be a part of the enterprise.

Q. Did you say to Charles W. Thomas or Edward L. Thomas that you intended to take the railway bonds yourself?

A. No, I never said it and never thought it.

Q. Before you became interested in this railway enterprise did you have an office in the city outside of your home?

A. No, sir, not for some years.

Q. Did you ever see Charles W. Thomas at your home?

A. Never.

Q. Do you or not recall now the time that the railway and coal company opened an office there?

A. I should say sometime in the month of March, 1893.

Q. That office was where?

A. In the Security Building.

Q. Did you have any conversation prior to March 25th, 1893, with Edward L. Thomas with regard to the charter of the Belleville City Railway Company?

A. No, sir.

Q. Or say to him that you would not go into the enterprise unless you had that?

A. I never did, I had no conversation of that kind at any time. All the conversation I had about it was with Mr. Chipley and I didn't say it to Mr. Chipley. I was not anxious to obtain
462 that charter in the first place, but Mr. Chipley was so persistent that I did not object to it. I told him that I thought he overestimated the value of it, but I saw no reason to object.

Q. Mr. Thomas says that you recovered judgment against him on a note for $750, which he gave you when you advanced the money to take up his note in the Third National Bank of this City?

A. Yes, sir I believe that is correct.

Q. You advanced it under the agreement that they were to be paid to you?

A. Yes, sir. It was a loan for which he gave me his note.

Q. What was the purpose of that advancement?

A. To obtain possession of some bonds that he had agreed to deliver which he was unable to do without putting up this money.

Q. Did you take his note on account of any uncertaainty in your mind about going into the enterprise?

A. No, sir.

Q. Had you gone into the enterprise?

A. I had already gone into the enterprise.

Q. You said you made purchases of property that went to the companies in your own name, why was that done?

A. It was done at Edward L. Thomas' suggestion, and his reason for it in some instances in the purchase of coal lands, was that he had made previous arrangements with the parties, made and agreed

price with the parties, but for deferred payment they would not be willing to take a note of those parties.

Q. And wanted your own name?

A. Wanted me to take the deeds in my name and give notes in my name for the deferred payments with the security of my note and a mortage on the property.

Q. I will ask you about the statement in C. W. Thomas' testimony, he said that in a conversation between yourself, C. W. Thomas and Mr. Chipley that you had told Mr. Thomas that you had not entered into the agreement of January 24th and would not because you wanted the Belleville City Railway charter, and stated to him that taking the enterprise under the charter would abrogate the agreement of January 24th, 1893.

A. No such conversation ever occurred. I never made
463 any such statement, no such statement, meeting or conversation ever occurred, I would say that all the knowledge that Charles W. Thomas had of the agreement of January 24th, was obtained subsequent, long subsequent, I should say, to the meeting of March 25th. That he had never seen and knew only by what had been told him by some third party other than myself what the purport of that agreement was. He had never seen the original paper, never heard it spoken of by me and never spoke to me of it, and even at that time nothing was said about it and he never to this day has asked me about it, or spoken to me about that agreement.

Q. I will ask you what amount you have expended in carrying out these railroad and coal enterprises, and what liabilities, contingent or fixed liabilities, are outstanding?

A. I could not make any definite statement in reply to that question without reference to documents which I have not here

Q. How would the payments you have made and the outstanding liabilities, either definite or contingent, compare with the sum of $500,000?

A. If you include the contingent liabilities I should say they have been greatly in excess of any amount I have received.

Q. What amounts have you received for bonds and stocks of the Company so far as you have disposed of them?

A. For the whole property I have received $500,000.

Q. You have no further interest in the corporation as stockholder or bondholder?

A. None whatever.

Cross-examination by Mr. THOMAS:

Q. You received that money on or about the 9th day of November, 1895?

A. I should say that was so.

Q. You claim that you are acting, and have been all this time, under what you say is the contract of January 24th, 1893?

A. I do.

Q. Did you ever render any account to Bart. S. Adams or Edward L. Thomas of the amount of money you had expended?

—. I did from time to time, several times made statements.

Q. Any final statement since you sold out?
A. I have made a statement within the last few months.
464 Q. You are unable to say what you have expended?
A. I have not it in my mind to say.
Q. Why haven't you brought your statements with you?
A. The papers are where I can get them but they are not here.
Q. Didn't you refuse to make statement to anybody time and time again?
A. No, sir.
Q. Never refused to make statements to anybody?
A. Never.
Q. Didn't you refuse to make a statement to Bart S. Adams and John T. Taylor?
A. No, sir.
Q. Didn't you refuse to make a statement upon a demand made by me, for one?
A. No, never.
A. Have you made a correct statement of it?
A. I have made—I will not say that any statement that I ever made was absolutely correct, there may be omissions, there may be errors in every statement, but they are trifling.
Q. Trifling, however, you say?
A. Yes, sir.
Q. There could be no substantial mistake?
A. I think not.
Q. No such mistake as a $10,000 item?
A. No, sir—there was a mistake in the papers I rendered before I had rendered a complete statement, there was a partial statement which I explained to the Court before it was discovered, it was a mistake of $10,000 or $11,000.
Q. In your complete statement you said you could not have -- any such mistake as that.
A. I think not.
Q. Let us know what you are getting at—you could not have made a mistake of a $3,000. or $4,000. item, could you?
A. I think not.
Q. You will not say you did not?
A. I say I do not think I did.
Q. You made that statement in the case of Taylor against yourself before Judge Dillon?
A. Yes, sir.
Q. Under the order of the referee?
A. Yes, sir, it was done by an expert who went over the accounts.
Q. You had in that contingent liabilities?
A. Yes, sir.
465 Q. One of those is to you for $20,000. For services?
A. Yes, sir.
Q. Do you claim you were entitled to compensation for services under the contract of January 24th?
A. I do.
Q. You had a claim for other services to Mr. Chipley of $5,000.00?

A. That was a claim that Mr. Chipley made and I put it in as he *calimed* it.

Q. Is it a correct one?

A. That remains to be seen whether it is or not. It was correct as far as my putting it in was concerned.

Q. You acting under the January 24th agreement were to float the bonds, were you not?

A. Yes, sir.

Q. Did you float the bonds?

A. I sold the bonds.

Q. What price did you get for them?

A. I sold the bonds together with the property altogether in a lump.

Q. The bonds and stock represented property?

A. In one way.

Q. The bonds were secured by mortgage on all the property?

A. Yes, sir.

Q. The stock was the stock of the Company that owned the property?

A. Yes, sir.

Q. You agreed under the contract of January 24th to float the bonds; what was to be done with the money—did you fix the price of the bonds when you sold them?

A. I fixed the price on the whole of the property.

Q. You intermingled the bonds of the Company that you were to sell or float under the contract of January 24th, with your own property?

A. I sold a certain part of the property and a certain part of the stock; the interest you had you sold yourself.

Q. I did?

A. You and Charles W. Thomas, or he sold for you.

Q Were you there?

A. I don't know, and then Charles W. Thomas paid you the money.

Q. You were there, were you not?

A. Where?

Q. At the place where the sale was made?

A I was at the place where the sale was made of the property that I sold.

Q. You sold the bonds and stock, a certain proportion of the stock?

466 A. I sold the bonds and property, I got nothing for the stock.

Q. What did you get for the bonds?

A. I made no separate price for the bonds.

Q. You put the stock in, didn't you sell it?

A. The stock I didn't consider had any value.

Q. So you didn't get anything for it?

A. I should say it had no value.

Q. You sold the bonds of the two companies for $500,000?

A. The railway and coal bonds together with the properties.

Q. You did not sell the stock?
A. I turned over some of it, I only delivered the stock I had to deliver.
Q. You didn't sell it because you didn't consider it of any value?
A. I turned in what I had.
Q. You turned in the stock?
A. I turned in the stock and bonds
Q. The stock represented the property?
A. I sold them together, the properties and bonds, and turned in the stock.
Q. You got $500,000.00 for what you sold?
A. Yes, sir.
Q. How much was for the bonds?
A. The amount of the coal bonds was $200,000, the amount of the railway bonds was $500,000.
Q. To whom did they belong at the time you sold them?
A. They belonged to the parties, part of them, some of them had been distributed.
Q. How many bonds had been distributed?
A. I don't recall just how many.
Q. How many do you think?
A. Perhaps $12,000 or $14,000.
Q. Had not $118,500 been distributed to you individually?
A. Yes, sir. There was more than $12,000 or $14,000.
Q. Had not $118,500 been distributed to you individually?
A. That was at a meeting that was not a very regular proceeding.
Q. Hadn't they been delivered to you?
A. I didn't consider they did belong to me more than the others.
Q. They were receipted for to the Trust Company?
A. I did it as treasurer for the Company.
467 Q. Did you do it as treasurer of the Company?
A. I did it as the papers show.
Q. You don't know how it was done?
A. I don't recollect exactly the form.
Q. Don't you know what was the substance of the receipt?
A. I know it turned over the entire issue of bonds of both companies.
Q. When you turned over the bonds you had fixed no price on the bonds of the Railway Company or the bonds of the Coal Company?
A. No, sir.
Q. Did the coal company hold a meeting authorizing you to sell its bonds?
A. The individual stockholders assented to it.
Q. There was no meeting of the Board of Directors for the purpose?
A. No meeting of the Board.
Q. Did they know what you were selling it at?
A. Yes sir.
Q. The price you were getting?
A. Yes, sir.

Q. Did Mr. Taylor know that?

A. I think he did.

Q. Don't you know that none of them knew the price that you were getting?

A. I know that all of them knew it.

Q. Did not Mr. Taylor tell you a few days afterwards that you had gotton $500,000. for it, and you wanted to know how he found it out?

A. No, sir.

Q. Nothing of that kind occurred?

A. No, sir.

Q. At the time of the making of this contract, as you call it, you did not sign it but took it for further consideration?

A. It was made by yourself, and before I had time to read it you left the office.

Q. I asked you a very simple question, and the answer is yes or no?

A. I was not asked to sign it, I took it.

Q. Did you take it for further consideration at that time?

A. There was nothing expressed.

Q. Did you not take it for further consideration?

A. I did take it and I did consider it.

468 Q. Didn't you at that time say you would take it for further consideration?

A. No, sir.

Q. Nothing of the kind said?

A. No, if I took it in that way, I may have said I would consider it, I can't say I didn't say those words, but there was no doubt in my mind that I would go into the enterprise.

Q. Did you not express it to Edward L. Thomas?

A. You did not ask me to sign it, you proposed to leave it with me for my consideration and Mr. Chipley's consideration.

Q. You say that Mr. Chipley by this was to sign it and take part in it?

A. Yes, sir.

Q. Did you consider Mr. Chipley was a party to this contract?

A. Mr. Chipley was a party so far as being represented in it.

Q. Was he not mentioned in the contract?

A. Yes, sir.

Q. He had to sign the contract also?

A. Yes sir.

Q. You and he signed it in June 1893?

A. I think it was June.

Q. The latter part of June?

A. I think it was in May or June.

Q. That was some two or three months after the meeting of March 25th?

A. The paper was laid aside and I was so occupied in carrying out the contract I hardly thought of the paper, and when Mr. Chipley suggested our names ought to be to it, then I signed it.

Q. I believe you heard Mr. Chipley swear to the contrary of that?

A. I don't recall that I did.

Q. You said there was nothing said about the taking of the bonds to you at any time, the railway bonds?

A. I don't understand it.

Q. Mr. Koerner asked you if you said to Edward L. Thomas or Charles W. Thomas that you intended to take the bonds?

A. No, I never said so to you or anybody else, I defy you to disprove it.

Q. There is no necessity for defiance, we will get along
469 without that?

A. If you make assertions of that kind, they are not true.

Q. You need not get angry.

A. I am not in the slightest angry.

Q. Your expressions show that. Answer the questions, and we will get along better. On the 29th of March, 1893, four days after the meeting you went over to Charles W. Thomas' office with Bart S. Adams, is that true?

A. No, I think not.

Q. Is not?

A. No, I never went to Charles W. Thomas' office with Bart S. Adams that I now recall.

Q. Did you execute a note on the twenty-ninth of March, 1893 to Bart S. Adams?

A. That note you refer to if it was for $11000.00?

Q. That is the note.

A. That is the note that has been produced once in Court and it had been changed. That paper was made and signed at a meeting, that is my recollection of it.

Q. Where was it had?

A. At Charles W. Thomas' office.

Q. You just now said you never had been there except at the meeting of March 25th?

A. I think it was made at that meeting of March 25th, or subsequent, I don't know what the date of the paper is.

Q. What was the date of the next meeting held after March 25th?

A. I can't tell you that.

Q. Don't you know there was not a meeting of the Crown Coal and Tow Company or the Belleville City Railway Company until the eleventh day of August, 1893?

A. The records will show that, I don't know it.

Q. The note was signed by you.

A. It purports to be.

Q. Haven't you seen it?

A. There was an alteration in it. I do not say I signed the paper
as it stands to-day.

Q. Did you say you did not?

A. I didn't say so.

Q. But you did sign that paper?

A. That is my signature, what was put on it afterwards I can't say.

Q. That paper is the note that is in the suit that obligates you to

pay to Bart S. Adams $11000. on the railway bonds for his interest in the Western Coal and Tow Company?

A. I think it says I will turn over to him, not pay him individually.

Q. That you will turn over?

470 A. Whatever is implied is in behalf of the Company.

Q. You were to turn over to him $11000. of bonds?

A. I believe the paper purports something of this kind. That paper never was presented for payment, it never was shown up until shown up recently.

Q. You agreed also on March the 25th, did you not, with Mary O. Thomas, with Edward L. Thomas as her agent in consideration of a deed to you of the greater part of the south-west quarter of section 11, township 2 north, 9 west, about 152 acres, to turn over or give to her $25,000.00. of railway bonds, did you not?

A. Whatever the paper shows is all that I can say. I have not the paper, I have not any means of saying.

Q. If that is so, if those two instruments were made by you——

A. If it is so I want you to produce it.

Q. If it is, how does it come you could do that without having the bonds yourself?

A. I do not propose to theorize on that question with you.

Q. You say that you did not think or didn't consider that you took $118,500 of the bonds of the coal company yourself?

A. I consider it the bonds were all in my charge.

Q. Were the $10,000 that were in the hands of Bart S. Adams in your charge?

A. Yes, sir, I so considered it.

Q. How did you get them?

A. They were placed with me by the action of the—of the agreement of January 24th, by virtue of that agreement I was entitled to the bonds.

Q. You say so?

A. I think so.

Q. You were entitled to the bonds, were you?

A. Yes, sir, entitled to the care of them.

Q. Of the coal bonds distributed to Bart S. Adams?

A. Yes, sir.

Q. When were those bonds distributed to Adams and yourself and Edward L. Thomas?

A. The records will show.

Q. Was it about the 10th of March, 1894?

A. It may have been.

471 Q. Didn't you offer the resolution yourself?

A. No, sir.

Q. You did not?

A. I didn't, I think not, if the record shows to the contrary, I will acknowledge I was mistaken?

Q. If you were mistaken about that, might you not have been mistaken about many of the positive statements you have made?

A. It may have been put in my name—, no, I am not mistaken about many of the statements.

Mr. KOERNER: You may continue your statement.

The WITNESS: The resolution may have been in my name, but it may have been written by another.

By Mr. THOMAS:

Q. Didn't you have Mr. Koerner write it for you?

A. I will not say, I don't know who wrote it.

Q. You have made an accounting to Judge Dillon, Referee, which you say is substantially correct, and in which there could be no mistakes of such sums as I have mentioned.

A. I don't say there could not be, I mean to say I do not think there were.

Q. Do you charge on that account $770 you paid for to Edward L. Thomas for grading?

A. I should think so.

Q. Didn't you take Edward L. Thomas' note for that?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Isn't that included in the $1050 note?

A. No, sir.

Q. What is in the $1050 note?

A. I paid Edward L. Thomas cash for that $770.

Q. For what was that?

A. Grading——

Q. What kind of cash?

A. That is my recollection of it.

Q. Did you pay a check?

A. It probably was.

Q. Was it not a check for $1050?

A. For grading, no.

Q. Which included another item of $200 and some odd dollars?

A. No, I think not, it was not.

Q. Is not the $770 included in the $1050?

A. No, sir.

Q. What was the 1050 given for?

A. It was for overdue interest you owed the Phillips heirs?

472 Q. No.

A. There was a large amount for that, I think that is it, I think I have the papers to show. I have the papers.

Q. Let us see them?

A. I have not got them here.

Q. Haven't you charged the account with $750 paid to the Third National Bank?

A. I think not.

Q. If you have, it is a mistake?

A. I think I have not.

Q. If you have, it is a mistake?

A. I don't think it is there.

Q. Haven't you charged that account with a note of the Belleville and St. Louis Railway Company made to Henry T. Kent?

A. I paid Henry T. Kent, and it is chargeable, it belongs to the account.

Q. Did you get the note from him for collection?

A. I got that note as I understood it for collection. He turned it around with your assistance.

Q. Haven't you sued me on it? And is not one of the judgments you sue me on in this case made up of this note?

A. No, sir.

Q. You swear to that positively?

A. It is not. I sued you on that note but it was defeated.

Q. No, that was not it. You say it was not one of the judgments?

A. I say I think not.

Q. You made a statement of what was due from the Crown Coal and Tow Company to you at the time of the distribution of the bonds, did you not?

A. I made a statement, I presented a statement.

Q. You charged the account of the Crown Coal and Tow Company with what was known as the Meysenburg note, did you not?

A. I will not say whether I did or not.

Q. Do you now charge it with that note?

A. I hold that note, yes.

Q. Do you charge the Crown Coal and Tow Company with it?

A. I would have to look into the account.

Q. If it is charged, it is correct?

A. It belongs to the Crown Coal and Tow Company to pay.

Q. It does?

A. I think so.

473 Q. You swear now it is part of the Crown Coal and Tow Company's indebtedness to you?

A. Did you ever pay it?

Q. Do you swear it is the debt of the Crown Coal and Tow Company to you?

A. Not of the Crown Coal and Tow Company perhaps.

Q. Didn't you charge it to the Crown Coal and Tow Company——

A. I will not say how the paper reads.

Q. (Continuing:) In the account with Judge Dillon?

A. You failed to pay it and let it go to protest and I paid it.

Q. Didn't you charge it to the Crown Coal and Tow Company as being paid by them?

A. I think I did, I will not say how it is charged.

Q. Then you signed this affidavit (handing paper to witness)?

A. That is the note you referred to, I suppose.

Q. After charging it to the Crown Coal and Tow Company you swore it was indebtedness of Bart Adams, Edward L. Thomas and John T. Taylor to you?

A. As indorsers.

Q. You swore it was their indebtedness?

A. As indorsers.

Q. They did not indorse it?

A. They either signed it or indorsed it.

Q. Were they not the signers of the note?

A. I will not say.
Q. Were they not the signers and you the guarantor?
A. The fact is you failed to pay it and I paid it.
Q. And charged it to the Crown Coal and Tow Company?
A. I sued Bart Adams as one of the parties.
Q. You charged it to the Crown Coal and Tow Company and received bonds for it?
A. I didn't receive the bonds.
Q. Then you sued Bart Adams in attachment?
A. You were another party.
Q. And now you charge it to the Crown Coal and Tow Company?
A. I will not say how it is charged.
Q. If it is in the statement you made to Judge Dillon in that list——
A. It is an indebtedness that has not been liquidated.
Q. You say the Crown Coal and Tow Company owes it to you?
A. I say it is owed by the proper parties whoever they
474 are. The note will speak for itself.
Q. I believe that you testified in a case of L. M. Chipley against the Crown Coal and Tow Company for salary; did you testify in that case that it was agreed by all parties that there were to be no salaries paid to anybody?
A. I don't recollect anything of that kind.
Q. Was that not the fact?
A. What the fact?
Q. That there were to be no salaries paid?
A. By virtue of what?
Q. That the agreement was there was to be no salaries paid?
A. What agreement?
Q. At the time of the meeting of March 25th?
A. Where is that agreement?
Q. Your verbal agreement?
A. No, I don't know any such agreement.
Q. Didn't you testify that was the arrangement or agreement?
A. There had been no salary fixed.
Q. Didn't you testify in the trial of this case——

Plaintiff's counsel objects to the question as irrelevant.

A. There had been no agreement about salaries.
Q. Had been what?
A. No agreement to pay salaries.
Q. Didn't you testify that there were to be no salaries?
A. There may have been a verbal agreement of that kind, that there were to be no salaries paid to the officers of the coal company, there may have been, but I do not recollect that there ever was any such.
Q. You had on your items that you rendered to Judge Dillon, had you not, salaries paid to different officers of the company?
A. Yes, there were fixed salaries.
Q. Who had the fixed salaries?

A. When you say there was an agreement to pay no salary I think that disproves it.

Q. Who had the fixed salary?

A. Bart Adams and John T. Taylor.

Q. Who else?

A. The bookkeepers.

Q. Did you have C. F. Stephens in the employ of the railroad Company?

A. I had.

475 Q. You had a salary fixed for him?

A. Yes, sir.

Q. That was fixed by the Board of Directors?

A. Fixed by myself, I guess.

Q. Were you authorized by the Board of Directors to do so?

A. I was authorized to construct the road.

Q. Were you authorized by the Board of Directors to employ C. F. Stephens?

A. I was not specifically directed to employ any number of horses or mules, but I employed a great many.

Q. You employed him at a fixed salary?

A. I employed him at a fixed salary.

Q. And paid it to him as you went along?

A. Yes, sir.

Q. In November, 1895, when you sold out, you settled with him for the salary?

A. I settled with him for what was due him.

Q. On the salary?

A. Yes, sir.

Q. Had you any authority from the Company to pay him an extra sum of money outside of his salary?

A. I will not say. I paid what I though- was due him.

Q. In other words you controlled the entire thing?

A. I controlled that part of it, the employment of help and the payment of such compensation as was necessary.

Q. And you paid out the money as you saw fit?

A. I was interested in the enterprise, carrying on the work of constructing the road, the working of coal mines and I expected to pay what I had to pay.

Q. Did you control it?

A. I did in that way by the assent of everybody.

Q. Didn't you control the Company?

A. They constituted the Company.

Q. Was there any protest made about the way you carried on the Company?

A. By Edward L. Thomas.

Q. That is right, I made them.

A. He made them.

Q. He protested against the sinking of the first coal pit?

A. He protested against everything he didn't do himself. You wanted it sunk on your own property. If you were right in

476 that it was the first instance I ever knew you to be right.

Q. You employed an attorney for the companies and the

contingent account you spoke of has in it the account of the attorneys for the companies?

A. Yes, sir.

Q. Did you fix any salary for them by your arrangement with them?

A. Yes, sir, I had a fixed salary with Mr. Holmes.

Q. For how much a month?

A. I would have to refer to my books.

Q. So you had a fixed salary; you had an agreement with him for a fixed salary?

A. Yes, sir.

Q. Did you have such an agreement with G. A. Koerner?

A. In the beginning I had a fixed agreement with G. A. Koerner but he repudiated it and it was abrogated.

Q. You had an agreement?

A. Yes, sir, in the beginning.

Q. What was that contract?

A. I will not undertake to say what it was, it was not a written one, it was a verbal one.

Q. Did you submit the employment of the attorney to the Board of Directors?

A. There was enough being submitted to them without doing that.

Q. Did you submit it to the Board of Directors? You can answer the question easily.

A. No, I don't think I did.

Q. You agreed individually after the 5th of November or the 8th of November, 1895, to arbitrate the question of the fees that should be paid to the attorneys, I speak of, you acting, as you say, as trustee for the other parties?

A. I was so acting, I considered.

Q. You did not consult any of the other parties interested in the fund regarding that, did you?

A. I consulted as I always had in all my business.

Q. Did you consult any of the other parties interested in the funds in regard to the question of submitting it to arbitration?

A. I will not say whether I did or not.

Q. Don't you know that you did not?

A. I do not recollect it.

Q. Don't you know that you did not consult anybody?

A. No, sir.

Q. Did you consult me?

A. No, I would not consult you, of course.

477 Q. Did you consult Charles W. Thomas?

A. I should think I didn't consult you or Charles W. Thomas.

Q. Wasn't I interested in the fund?

A. No, sir.

Q. I had no interest in it?

A. No, sir.

Q. You repudiate the contract of January 24th?

A. I do not. You do.

Q. You say after the contract was signed and we had gone under it that there was no claim to anything from me that could come out of the bonds?

A. I thought you put yourself outside of it.

Q. You would say you had a claim?

A. I don't think you had any claim on the Company, I think all your just claims have been satisfied long ago, more than satisfied.

Q. You paid them, did you?

A. Yes, in one way.

Q. Did you pay any of it at all?

A. I paid a good deal.

Q. Have you paid any of them at all?

A. I paid a good deal that I wouldn't pay if I had to go over it again.

Q. You have a charge in these books of a judgment, on a mortgage, that one Edward L. Thomas conveyed to you some property at the foot of the bluff at one time that had a railroad built across it and there were mortgages on it, you paid those off, did you?

A. Yes, sir.

Q. And you charged that to the Company, is that right?

A. I presume so.

Q. Is that a correct charge?

A. I think so.

Q. That is the manner of your making up your charges?

A. They were charged with what I paid and credited with what I received.

Q. Have you credited the account with what you have received?

A. Yes, sir.

Q. All you have received?

A. That is my intention, I think it has been done.

Q. You remember the case of Edward C. Rice against the St. Louis and Belleville Railway Company?

A. I do.

Q. You defended that case, didn't you?

A. Yes, sir.

478 Q. Employed attorneys to defend it?

A. Yes, sir.

Q. And paid the judgment after it was recovered?

A. Yes, sir. I would like to say in that connection that I consider it a first-class swindle, one of the most barefaced swindles that I was ever cognizant of.

SAMUEL H. LEATHE.

Subscribed and sworn to before me this — day of February, 1899.

——— ———,

Commissioner.

479 The said SAMUEL LEATHE being first duly sworn by me, as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the defendant as the plaintiff, in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. KOERNER:

Q. Your name?
A. Samuel Leathe.
Q. How old are you?
A. 39.
Q. Where do you live?
A. In St. Louis.
Q. You are the son of Mr. Samuel H. Leathe, the last witness?
A. Yes, sir.
Q. Were you present at a meeting of Directors and stockholders of the Belleville City Railway Company and the Crown Coal Co. and the Crown Coal and Tow Company in the office of Charles W. Thomas at Belleville, Illinois, on March 25th, 1893?
A. I was.
Q. I will ask you while you were there—in the first place, how much of the time were you there?
A. I was there most all of the time that anybody else was, I was twice to the Court House, if I remember right.
Q. On what occasion did you go to the Court House?
A. To have some deeds filed, I think that was it, I was in the Recorder's office there.
Q. Then you were there until after the deeds passed, were you?
A. Yes, sir, I went there in the morning and staid there all the time until I was sent out with the deeds.
Q. It was stated by some of the witnesses in this case that your father, Samuel H. Leathe, then and there agreed to pay the debts of the Belleville and St. Louis Railway Company, I will ask you if that occurred?
A. I never heard anything of it.
480 Q. Well, were you so situated that if it had occurred you would have been able to have heard it?
A. Yes, sir, I was around amongst the other people all the time.
Q. Such a thing as that would have interested you, would it not?
A. I think it would.
Q. You think you would have noted it if it had occurred?
A. Yes, sir, I feel positive I would.

Cross-examination by Mr. THOMAS:

Q. You testified in the case of Samuel H. Leathe, the Belleville and St. Louis Railway Company and the Belleville City Railway Company against Edward L. Thomas in the Circuit Court in the fall of 1893 in Belleville?
A. I could not say that I testified in that particular case, I testified in several cases.

Q. Didn't you testify in the first case heard over there?

A. I think I did, I could not say positively.

Q. In the cross-examination didn't you say, "Q. You do not know what occurred while you were absent; something of that kind might have been said while you were absent and you would not have heard it, would you? A. I didn't say it was not said; I said I did not hear it said?"

A. That is right.

Q. You say you are the son of Samuel H. Leathe?

A. Yes, sir.

Q. You have business relations with him?

A. Some.

Q. Will you be kind enough to look at this and state how you came by that (handing paper to witness)? Look on the back of it and maybe you will see your own handwriting, you recognize that, don't you?

Plaintiff's counsel objects to this as not cross-examination.

A. I do not recall it.

Q. You do not know your own handwriting when you see it?

A. Yes, sir, I know my handwriting.

Q. Don't you know that the Sheriff paid you the money and you paid it to your father?

A. I do not recollect it, I remember there were some case of that kind, I don't know what it was.

481 Q. Didn't you draw the redemption money on that from the Sheriff—it was a large sum of money?

A. I drew some money.

Q. Didn't you pay it to your father?

A. I don't remember that circumstance at all. It is apparently all right, I signed my name to it.

Q. You did not pay your father $3300. for it when he assigned it to you?

A. I don't remember.

Q. You would remember whether you paid $3300. to your father for an instrument of that kind?

A. I think I would.

Q. Did you do it? Didn't you pay the money to your father when you got it?

A. I don't know what you are talking about.

Q. That is your signature on the back of it?

A. Yes, sir.

Q. You signed it

A. Yes, sir.

Q. You didn't sign it without receiving money for it?

A. No, sir.

Q. Did you pay it to your father when you got it?

A. I don't know whether I paid it to him or who I paid it to, I don't remember the circumstance at all.

Q. You know that you did not give your father $3300. according to the receipt when he assigned it to you?

A. I don't remember paying him that amount of money.
Q. You say you cannot remember anything at all about a transaction of that kind?
A. I remember there was some transaction over there, I have forgotten what it was about.
Q. Did you give the money to your father?
A. I don't remember.

The paper referred to is marked "Exhibit B referred to in the deposition of Samuel Leathe, January 31st, 1899" and is returned to Mr. Thomas.

Q. You had some assignments from your father of tax sales from Thomas Marshall?
A. Yes, sir.
Q. And took out a deed on them, he sold them to you?
A. Yes, sir.
Q. How much were they?
A. I don't remember.
482 Q. These are not the ones he redeemed?
A. I do not know that.
Q. He assigned to you two tax sales?
A. I don't know whether one or two.
Q. You got a deed of the premises for that?
A. Yes, sir.

Plaintiff's counsel objects to this as not cross-examination.

Q. You claimed to be the owner after that?
A. Yes, sir.

SAM'L LEATHE.

Subscribed and sworn to before me this 11th day of February, 1899.

EDGAR R. ROMBAUER,
Commissioner.

Plaintiff's counsel presents to the Commissioner the affidavit of Samuel H. Leathe with a Doctor's certificate and transcript of evidence attached, the whole being marked Exhibit C and hereto attached.

I, Edgar R. Rombauer, of the City of St. Louis and State of Missouri, a Commissioner duly appointed to take the deposition of the said Samuel H. Leathe and Samuel Leathe, witnesses, whose names are subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Samuel H. Leathe and Samuel Leathe, as witnesses in the said suit between Samuel H. Leathe, plaintiff, and Edward L. Thomas, defendant, they were duly sworn by me to testify the truth in relation to the matters in controversy between the said Samuel H. Leathe, plaintiff, and the said Edward L. Thomas, defendant, so far as they should be interrogated concerning the same; that the said deposition was taken in my office, 611 Roe Building, South-west Corner, Broadway and Pine Streets, in the City of St. Louis and State of Missouri, on

the 30th and 31st days of January, 1899; and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto were correctly transcribed from shorthand notes thereof and were read over to the said witnesses and thereupon the same was signed and sworn to by the said deponents, Samuel H. Leathe and Samuel Leathe before me, at the place and on the day last aforesaid.

EDGAR R. ROMBAUER,
Commissioner.

483 & 484 EXHIBIT C.

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court of said County.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

January 31st, 1899. Edgar R. Rombauer, Commissioner.

Samuel H. Leathe being duly sworn on his oath says that he is the plaintiff in the above entitled suit, and that he desires before the hearing of said cause to take the evidence of one Lucien M. Chipley, that said Chipley is a material witness in his behalf; that said Chipley resides at Old Orchard, a suburb of the City of St. Louis, and does business in city of St. Louis, his office being in the Bank of Commerce Building on Olive Street between 4th Street and Broadway, that he expects said Chipley to testify in substance as his testimony appears in a paper marked "Exhibit A" which will be attached hereto.

Affiant states that said Chipley has repeatedly promised him that he would attend as a witness either at the trial of the cause at Belleville or give his deposition at St. Louis, without the service of a writ of subpœna, and states that said witness would be present to-day before the commissioner, but for the fact that he is confined to his house by sickness, that affiant visited him on Friday last, and found him very sick and his condition such that it was apparent he could not possibly attend on the 30th of January or the 31st of January, that he had been ill, as affiant learned, and unable to leave his residence or attend to business since the 20th day of November, 1898; that affiant expects to have the testimony of said witness within the next thirty or sixty days, that the affiant therefore asks that the time for taking evidence in this cause may be extended a reasonable time to enable him to take the evidence of said Lucien M. Chipley.

485 That said Chipley is not absent by the connivance and consent of this affiant—that this affidavit is not made for delay but that justice may be done.

And in addition thereto affiant expects to prove that the said Chipley will testify that the statements of Charles W. Thomas and

Edward L. Thomas in their evidence in this case in regard to conversations said to have been had by them or either of them in presence of said Chipley with said Leathe are not true.

SAMUEL H. LEATHE.

Subscribed and sworn to before me this 31st day of January, 1899.

EDGAR R. ROMBAUER,
Special Commissioner.

This is to certify that Mr. L. M. Chipley is sick and under my professional care. He is unable to attend Court under any circumstances.

W. G. MOORE, M. D.,
86 *Vandeventer Place, St. Louis.*

Jan'y 27, '99.

LUCIEN M. CHIPLEY, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. THOMAS:

Q. What is your name?
A. Lucien M. Chipley.
Q. Where do you reside?
A. St. Louis, Missouri.
Q. What is your business?
A. Real estate and financial agent.
Q. Do you know Mr. Leathe?
A. Yes, sir.
486 Q. Myself?
A. Yes, sir.
Q. Charles W. Thomas?
A. Yes, sir.
Q. What do you know regarding the enterprise of the Belleville and St. Louis Railway Company?
A. I know a great deal.
Q. When did you first become acquainted with the Belleville and St. Louis Railway Company?
A. I believe it was in 1889 that the matter was first brought to my attention by Captain Adams and yourself.
Q. Then did you do anything with it at that time?

Objected to.

Q. I mean when did you hear of it in connection with Mr. Leathe?
A. In the fall of 1892 I think it was.
Q. What did you do in regard to that?

Objected to as not rebuttal.

Mr. HAMILL: No, it is not rebuttal but we desire to call him in chief under the agreement we had with the attorney on the other side. Leave to examine the witness in chief was granted with the understanding that if anything transpired which defendant desired to rebut, time would be given to bring witnesses into Court.

Q. Now, Mr. Chipley, what did you do in regard to this matter in the latter part of 1892?

A. I presented the matter to Mr. Samuel H. Leathe; at that time I was acting for him in some real estate matters and other matters in St. Louis; I was buying and selling considerable property for him, several hundred thousand dollars' worth, and I suggested the enterprise to him. He was owning a large tract of land in Florida and was contemplating building a railroad and large hotel; I told him I had a railroad scheme of my own and presented the
487 matter to him with all the information I could give him in regard to it. He said that he would investigate the matter; I suggested that it was a bad time of the year but he said he could walk it and proposed to walk from St. Louis to Belleville over the road as it had been graded; we went over the road and after we had examined it he asked me what the proposition was. I told him that any man furnishing the money to build the road and equip it would receive fifty-one per cent. of the stock and his money returned to him from the sale of the bonds; that it was proposed to issue $500,000 worth of bonds and the man that advanced the money got fifty-one per cent. of the stock and his money refunded to him from the sale of the bonds. He asked me for a proposition in writing from these parties; I sent for Mr. Thomas and Mr. Adams and they made him a proposition in writing some time in December or January. In the meantime Mr. Charles W. Thomas came before me with his charter.

Q. Don't get that far yet. Did he employ anybody else to look over the road?

A. He did, he got Major Steven, an engineer who went over the road and made a report.

Q. To Mr. Leathe?

A. Yes, sir.

Q. Now, then, do you remember this letter dated January 12th?

A. Yes, sir, I think that is the same one.

Q. Well, now, was there any agreement made following that letter between Mr. Leathe, Mr. Thomas, Mr. Adams and yourself?

A. There was no agreement signed on that day.

Q. Look at that paper and see what that is?

A. That is a proposition that was submitted.

Q. Who signed that now at the time it was submitted?

A. You and Mr. Adams signed it.

Q. When was it signed by Mr. Leathe and yourself?

A. About the 27th of June.

Q. What became of it after it was signed by Mr. Thomas and Mr. Adams?

488 A. It was handed over to Mr. Leathe.

Q. When was it signed by Mr. Leathe and yourself?

A. The 27th day of June, I think, 1893, or the 27th day of July.

Q. What was the occasion of it?

A. We had organized the Belleville City Railway Company at that time placing all the property in the hands of Mr. Leathe and from Mr. Leathe to the Belleville City Railway Company and Mr. Leathe was going on under the new contract, the Belleville City Railway Co. contract; when I was at his house one Sunday evening in looking over

some papers he brought out this original paper dated January 24th, 1893, and suggested that it would be well enough for us to sign it, and we did sign it, and he kept possession of it.

Q. What did he say in regard to it?

A. He said it would be well enough for us to forget the day we signed it and when I left the house and got under an electric light and took out a little book which I carry to make notes and made a memoranda of it.

Q. Did you ever solicit him to sign it?

A. No, sir.

Q. Did he solicit you?

A. He solicited me, he suggested it.

Q. Now, I want to ask you, Mr. Chipley, in regard to the first time you heard of the Belleville City Railway charter?

A. I do not remember the exact date, it was prior to the meeting of the Belleville City Railway Company that it was taken into consideration by Mr. Leathe, it was at my office that your brother Charles W. Thomas came there and laid the proposition before us, and paid very glowing terms what that charter was, what we could do under the charter.

Q. Who was present there?

A. Mr. Leathe and myself and it was decided by Mr. Leathe and myself that that was the charter we wanted to act under.

489 Q. At that time had you signed this agreement?

A. No, sir.

Q. Then what was done in regard to the matter?

A. I will say that shortly after that you came to see Mr. Leathe and myself at my office with two or three propositions that you wanted to submit in lieu of the original proposition.

Q. Had the original proposition been signed?

A. No, sir.

Q. What had Mr. Leathe said in regard to the proposition at that time, would he accept it, the original proposition?

A. He would not go ahead under it. You submitted a proposition and I read it, I don't know whether I handed it to Mr. Leathe, but I think I did hand it to Mr. Leathe, and I told you that I would not be willing to act under that proposition.

Q. What did Mr. Leathe say?

A. He said the same thing.

Q. Was this it (handing witness a paper)?

A. I think it is.

Q. Now, Mr. Chipley, what was the cause of the submission of this proposition, why was that submitted, the proposition of February 20th, 1893?

A. I could not say as to why you wanted it, you wanted to substitute it for the one of January 24th.

Q. Had or had not Mr. Leathe at any time prior to February 20th said he would not go on under the January 24th one?

A. He said he would not go on under the original proposition, yes, sir.

Q. Do you know whether the original proposition was the January 24th one?

A. The one that was signed by Mr. Adams and myself?

—. ——.

A. Yes, sir.

Q. Were you to be within that, with Mr. Adams and myself or with Mr. Leathe?

490 A. I was to be with Mr. Leathe in this proposition.

Q. Now, then, state whether or not there were any objections made by me as to the Belleville City Railway charter?

Objected to.

A. Yes, sir. There was objection made by you, you wanted to operate under the Belleville and St. Louis charter and you objected to paying Charles W. Thomas the $25,000. for the charter.

Q. What did I finally do?

A. You finally accepted Mr. Charles W. Thomas' proposition and paid him $25,000.

Q. Was anything done in connection with that, was any instrument signed by Mr. Leathe as to whether he would go on or not under the proposition of January 24th?

Q. Mr. Leathe had stated that he would not go under the proposition of January 24th.

Q. Well, now, was there any conversation or conversations held by you, Mr. Leathe and Mr. Charles W. Thomas in your office in regard to the plan that was to be made with the Belleville City Railway charter?

A. Yes, sir.

Q. How many times about?

A. Well, several times, I could not state the number.

Q. Were they mere casual conversation or conversations going into the details of fact?

A. We went into the details pretty thoroughly in regard to the charter and the powers under it, and why we should have it instead of the Belleville and St. Louis Railway charter.

Q. Did you go into any details as to what was to be done if that charter was to be done to Mr. Leathe and to you was it to be used?

A. Yes, sir.

Q. In those different conversations was Mr. Leathe to receive 51 per cent. of the stock of the road and to build the road—was anything said about the paying up the stock of the Company by Mr. Charles W. Thomas?

491 A. Mr. Charles W. Thomas stated that the buying of the Belleville and St. Louis Railway property and issue of it to the Belleville City Railway would fully pay up the stock of the Company.

Q. Was there any other property which had been acquired by Mr. Leathe mentioned in that connection?

A. I do not remember that there was.

Q. The Snyder lot?

A. I do not remember whether that was at that time or not.

Q. Now, Mr. Chipley, at the time of the making of this contract and the negotiations leading to the contract, for whom were you acting?

A. I was acting for L. M. Chipley and Samuel H. Leathe.

Q. Now, Mr. Chipley, you remember the meeting of March 25th, at the office of Charles W. Thomas?

A. Yes, sir.

Q. You know that there was a deed made on that day from the Belleville and St. Louis Railway Company to Mr. Leathe?

A. Yes, sir.

Q. What for?

A. To enable him to turn it over to the Belleville City Railway Co. and pay up the stock of the company with it.

Q. What was he to pay for that to the Belleville and St. Louis Railway Company, if anything?

A. He was to pay all outstanding debts of the Company.

Q. Of what Company?

A. The Belleville and St. Louis Railway Company. And he was to assign the stock to the parties as agreed upon at that time.

Q. Now after Mr. Leathe got the property from the Belleville and St. Louis Railway Company what did he do with it?

A. He deeded it to the Belleville City Railway Company.

Q. Under the agreement spoken of?

A. Yes, sir.

Q. Now had the agreement that was consummated by the action of the parties on the 25th of March been talked about before that?

492 A. Yes, sir.

Q. Where?

A. In my office.

Q. By whom?

A. By all concerned.

Q. Mr. Leathe, too?

A. Mr. Leathe, Mr. Charles W. Thomas, yourself, Bart S. Adams, Taylor, myself; Needles, I believe, was interested, but was not present.

Q. Was Bart Adams and Mr. Taylor there all the time?

A. I could not say they were there all the time, no, sir.

Q. In most of the conversations you and Mr. Leathe and Mr. Charles W. Thomas were together?

A. Yes, sir.

Q. I was not there?

A. Yes, sir.

Q. Well, was it or was it not practically agreed on to do these things that were done on the 25th of March before the 25th of March?

A. Yes, sir.

Q. Do you remember anything about the sale of land by myself and wife to Mr. Leathe—which was to go to the Crown Coal and Tow Company on the 25th of March, and the dispute about the purchase price we had there?

Objected to.

Q. That was all one transaction, was it not?

A. Yes, sir.

Q. You remember the dispute about the price of the land?

A. Yes, sir, we wanted you to turn it over to the Company for $24,000, and you wanted $25,000, and we refused to give $25,000.

Q. Was anything said about why I wanted $25,000. Didn't I say that if I had to give some of my stock to Charles W. Thomas I ought to have more for the land?

A. I did not remember that.

493 Q. Now Mr. Leathe says that the $750, and the $2,000, he advanced was under this agreement?

A. I know that from him I don't think it was $2,000, though.

Q. Well, I know I bought one for him for $1,500, and the other was $750, at the Third National Bank, you say you knew that from him?

A. Yes, sir.

Q. Well, was the money to be returned to him on demand by either myself or Mr. Adams under the agreement?

Objected to on the ground that the agreement speaks for itself.

A. My understanding was that the advances were to the railroad company and were to be paid back to him upon the sale of the bonds and he was to hold possession of your interest until you paid up that; that was entirely satisfactory to him.

Q. Now, then, this contract of January 24th, was it, or was it not ever in force between the parties?

A. That is the original, no, sir, that never was in force.

Q. Under what contract was Mr. Leathe going on building the road, that you know?

A. Under the contract with the Belleville City Railway.

Q. Entered into when?

A. On the 25th of March.

Q. Do you know that from him?

A. Yes, sir, and from myself being present and being one of the parties to the transaction.

Cross-examination.

Cross-examination by Mr. KOERNER:

Q. Mr. Chipley, when did you or Mr. Leathe take up the bonds that were in the possession of Mrs. Johnson?

A. I do not remember the date.

Q. Was it prior to March 25th?

A. Yes, sir.

Q. Then Mr. Leathe was acting under that proposition when he took that up, was he not?

494 A. Yes, sir.

Q. Now why did he do that, and under agreement with whom?

A. Well, he did it with the understanding at that time on his part, that Bart Adams was to turn the money back to him providing that he did not go ahead with the agreement that was being

submitted and I think demanded a note for the money, Mr. Leathe said that he had Mr. Adams' note.

Q. Is it not true that under the agreement of January 24th Mr. Leathe agreed to advance this money?

A. No, I do not think it was under that agreement, not as I understand it.

Q. It was not under that agreement?

A. I do not think it was.

Q. Did he not agree in that agreement to advance $750, to take up the bonds that were held as collateral by the Third National Bank for a $750, note of Mr. Thomas?

A. I do not know whether he agreed at any other time or not, I know it was not taken up right at that time, it was sometime afterwards before he told me he had taken up the Thomas note.

Q. That was prior to March 25th, was it not?

A. I could not say that it was.

Q. Was it not prior to March 25th that he purchased what you call the Snyder lot?

A. Yes, sir, I think it was.

Q. Is it not true that prior to March 25th he purchased large quantities of coal lands?

A. I think that he did.

Q. The proposition was, as I understand you to say, originally that Mr. Leathe should put up the money to complete this road and get fifty-one per cent. of the stock of the road and pay himself out of the bonds thereon and the balance was to pay the debts of the other parties if there was enough left?

A. Yes, sir.

495 Q. That was it?

A. Yes, sir.

Q. Now, do I understand you to say that Mr. Leathe knowingly ever agreed to anything else than that?

A. Well, that I could not tell you anything about, what Mr. Leathe might have agreed to, I do not know.

Q. Was the understanding ever changed that he was to be paid first, out of the proceeds of the bonds and then the others?

A. No, sir, Mr. Leathe was to be paid first; I had that inserted and suggested it myself that Mr. Leathe was to receive his money back first, I was acting for Mr. Leathe in that matter and made that suggestion.

Q. That understanding was never changed in anything that occurred to your knowledge?

A. Not to my knowledge, no sir.

Q. Mr. Leathe declined, as I understand you to say, to pay anything towards the $25,000, that Charles W. Thomas required to substitute his charter for the old Belleville and St. Louis Railroad?

A. Yes, sir, and I declined to have it come out of our stock.

Q. So if there was any change there that you know of in the relation of the parties, it was that the Belleville City Railway Company charter was substituted for the Belleville and St. Louis charter, under which you first wanted to act?

A. Yes, sir.

Q. Now, the purpose of the meeting in Belleville on March 25th was, as I understand you, to consummate this change?

A. Yes, sir, and to increase the capital stock and provide for forwarding the enterprise.

Re-examination.

Re-examination by Mr. THOMAS:

Q. Mr. Chipley, this that you spoke of, was under the first
496 agreement that was never executed by you and Mr. Leathe, was it not?

A. What is that you refer to?

Q. The supposed contract of January 24th.

A. Yes, sir.

Q. But Mr. Leathe never executed that, and, on the contrary, refused to go on with it?

A. Yes, sir, he refused to go on with that.

Q. When he took this assignment, these conveyances, and took them in his own name, did he give you any reason why?

A. On the Snyder lot he said he considered it a good investment if he never consummated the deal with the Railroad Company.

Q. He considered it a good investment independent of that?

A. Yes, sir.

Q. At that time he had not gone into this agreement and refused to go on under the original agreement.

A. He refused to go on under the original agreement.

Q. Now, then, at this time in the office of Mr. Charles W. Thomas on the 25th of March, before this conveyance was made to Mr. Leathe, was it not upon the condition that he pay the debts of the Belleville and St. Louis Railway Company?

Objected to.

A. The old charter was abandoned and the Belleville City Charter was substituted in place of it.

Q. Under the contract as you have stated before?

A. Yes, sir.

496¼ *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1896.

No. 414.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS, Plaintiff in Error,
vs.
SAMUEL H. LEATHE, Defendant in Error.

Mr. Edward L. Thomas, Counsel for Plaintiff in Error.
Mr. G. A. Koerner, Counsel for Defendant in Error.

Appeal from the Circuit Court of the United States for the Southern District of Illinois, Southern Division.

Transcript of record filed May 1, 1897.
Printed Record filed Aug. 21 1897.
OLIVER T. MORTON *Clerk.*

496½ In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1896.

No. 414.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS, Plaintiff in Error,
vs.
SAMUEL H. LEATHE, Defendant in Error.

Mr. Edward L. Thomas, Counsel for Plaintiff in Error.
Mr. G. A. Koerner, Counsel for Defendant in Error.

Appeal from the Circuit Court of the United States for the Southern District of Illinois, Southern Division.

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501 & 502 In the Circuit Court of the United States, Southern District of Illinois.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

503 Pleas in the Circuit Court of the United States of America for the Southern District of Illinois, held at the City of Springfield, in said district, before the Hon. William J. Allen, district judge of said *judge,* and in the absence of the Hon. William A. Woods, the Hon. James G. Jenkins and the Hon. John W. Showalter, Judges of the Seventh Judicial Circuit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and ninety-seven, and of our independence the one hundred and twenty-first year.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

504 Be it remembered that heretofore, to wit: on the fifteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four, came Samuel H. Leathe, by Gustavus A. Koerner, Esq., his attorney, and filed in the office of the Clerk of the Circuit Court of the United States for the Southern District of Illinois, a certain record from the Circuit Court in and for the County of St. Clair and State of Illinois, in a certain suit wherein The Belleville and St. Louis Railway Company for the use of Edward L. Thomas is plaintiff, and Samuel H. Leathe is defendant, which certified record is as follows, to wit:

STATE OF ILLINOIS, *St. Clair County, ss:*

At a regular term of the Circuit Court, within and for the County of St. Clair and State of Illinois, begun and held at the court house, in the City of Belleville, in said County of St. Clair, on Monday, the 9th day of April, A. D. 1894, it being the second Monday of April, A. D. 1894, according to the Act of the General Assembly, by the Hon. Alonzo S. Wilderman, one of the judges of the Third Judicial Circuit of the State of Illinois, of which the said County of St. Clair forms a part, the following proceeding- were had, to wit:

Present: Honorable Alonzo S. Wilderman, Judge; J. D. Langley, Sheriff; Martin W. Schaefer, State's Attorney; Thomas May, Jr., Clerk.

505 Be it remembered that the following is a true and correct copy of the præcipe for a summons filed in the case of The Belleville and St. Louis Railway Company for the use of Edward L. Thomas *vs.* Samuel H. Leathe, to wit:

In the Circuit Court, to the April Term, A. D. 1894.

STATE OF ILLINOIS, *St. Clair County:*

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Ass't. Damages, $60,000.

The clerk will please issue summons as above and oblige,
EDWARD L. THOMAS, *Pro Se.*

Filed March 1, 1894.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ills.

Be it remembered that the following is a true and correct copy of the summons issued in the above entitled cause, and the return of the officer thereon, to wit:

STATE OF ILLINOIS, *County of St. Clair, set:*

The People of the State of Illinois to the Sheriff of St. Clair County, Greeting:

We command you to summon Samuel H. Leathe if he can be found in your County, to be and appear in the St. Clair County Circuit Court, on the first day of the next term thereof, to be holden at the Court House, in the City of Belleville, in said County of St. Clair, on the second Monday of April, 1894, then and there to answer unto The Belleville and St. Louis Railway Company
506 for the use of Edward L. Thomas, of a plea of trespass on the case upon promises, to the plaintiff's damages as it says of the sum of Sixty Thousand Dollars; and do not fail, under penalty of what the law directs. And this writ you shall have at our said court, with your return indorsed thereon.

Witness, Thomas May, Jr., Clerk of the Circuit Court and the seal thereof hereunto affixed at office, this 1st day of March, A. D. One Thousand Eight hundred and Ninety-four.

[SEAL.] THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Deputy.*

I hereby deputize Charles M. Glaser to serve the within writ this 1st day of March, 1894.

J. D. LANGLEY,
Sheriff of St. Clair County.

STATE OF ILLINOIS, *County of St. Clair, ss:*

Personally appeared before me, Thomas May, Jr., Clerk of the Circuit Court, in and for said County and State aforesaid, Charles M. Glaser, Esq., who, being duly sworn, on his oath states that he has duly served this writ by reading the same to Samuel H. Leathe, the within defendant, on the 13th day of March, A. D. 1894.

CHARLES M. GLASER,
Special Deputy.

Subscribed and sworn to before me this 13th day of March, A. D. 1894.

THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Deputy.*

Filed Apr. 4, 1894.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair County, Ills.

507 Be it remembered that the following is a true and correct copy of the declaration filed in the above entitled cause, to wit:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the April Term, A. D. 1894.

The Belleville and St. Louis Railway Company, a corporation organized under the laws of the State of Illinois, which sues for the use of Edward L. Thomas, the plaintiff, by Edward L. Thomas, its attorney, complains of Samuel H. Leathe, the defendant, of a plea of trespass on the case upon promises. For that whereas, the plaintiff, on the 25th day of March, A. D. 1893, at the County of St. Clair, aforesaid, being then the owner of a large quantity of valuable real estate, conveyed the same by deed of that date duly executed and acknowledged and delivered, to Samuel H. Leathe, the defendant, for and in consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff.

And plaintiff avers that said defendant then and there accepted said deed.

And plaintiff further avers that the other valuable considerations moving from said defendant to said plaintiff, was the promise and agreement of the said defendant then and there made, in consideration of said deed, and as payment of the purchase money of the property conveyed by said deed, that he the defendant would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from plaintiff to divers parties.

And plaintiff further avers that it was then and there indebted to Edward L. Thomas in large sum of money, to wit: in the sum of sixty thousand dollars ($60,000), of which the defendant then and there had full notice.

And plaintiff further avers, that the said indebtedness of the plaintiff to said Edward L. Thomas was part of the indebtedness of plaintiff then and there promised and agreed to be paid by said defendant as part of the consideration of said deed.

And plaintiff further avers that said indebtedness to said Edward L. Thomas has not been paid, but is still a subsisting indebtedness of plaintiff and is long since due and payable.

508 And plaintiff further avers, that afterwards, to wit: on the day and year aforesaid at the county aforesaid, in consideration of the premises defendant promised to pay plaintiff for the use aforesaid, said sum of money when thereunto afterwards requested, and although often requested defendant has not paid said sum of money or any part hitherto, and still doth refuse*d*, to the damage of plaintiff for the use aforesaid of Sixty Thousand Dollars wherefore it brings suit, &c.

By EDWARD L. THOMAS,
Plaintiff's Attorney.

(*Copy of Acc't Sued On.*)

Samuel H. Leathe, Dr., to Belleville & St. Louis Railway Company, for the use of Edward L. Thomas.

To indebtedness of Railway Company to Edward L. Thomas, agreed to be paid by said Leathe in consideration of execution and delivery to him of deed of property of Railway Company, $60,000.00.

Copy of Instrument Sued On.

The grantor, the Belleville and St. Louis Railway Company, a Corporation of the State of Illinois, in consideration of One Dollar to it in hand paid by Samuel H. Leathe of the City of St. Louis and State of Missouri and of other valuable consideration to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe, all the following described land situated in the County of St. Clair and State of Illinois: All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

Also all the rights of way, easements, grading and superstructure thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis.

And the grantor covenants and agrees to and with said Leathe, that it will upon demand convey good and proper deed of conveyance to said Leathe and his assigns, any land, easements, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March A. D. 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE AND ST. LOUIS RAILWAY CO.,
[SEAL.] By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

509 We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public, in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument for the uses and purposes therein set forth as president of said company. That he is president of said company and executed said deed as president by order of the stockholders of said company whose names are subscribed thereto also. That said Needles is secretary of said company and that he attached the seal of said company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March A. D. 1893.

A. F. MILLER,
Notary Public.

Filed March 25th, 1893, at 2:27 o'clock P. M.
Filed March 29, 1894.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ills.

510 Be it remembered that the following is a true and correct copy of the Petition for Removal of Cause to the United States Circuit Court, filed in the above entitled cause, to wit:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court of Said County, April Term, A. D. 1894.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, a Corporation Organized under the Laws of the State of Illinois, which Sues for the Uses of EDWARD L. THOMAS, Plaintiff,

vs.

SAMUEL H. LEATHE, Defendant.

To the Honorable the Circuit Court of the County and State aforesaid:

Your Petitioner respectfully shows to this Honorable Court that the matter and amount in dispute in the above entitled suit exceeds, exclusive of costs, the sum or value of two thousand dollars.

That the controversy in said suit is between citizens and residents of different states, and that the Petitioner, the defendant herein, is now, and was at the time of the commencement of this suit, a citizen and resident of the State of Missouri, and that the plaintiff herein, The Belleville and St. Louis Railway Company, is a corporation organized under the laws of the State of Illinois, and is a citizen and resident of said State of Illinois, and that the said Edward L. Thomas, for whose use the said suit is brought, is now and was at the time of the commencement of said suit a citizen and resident of the State of Illinois.

And your Petitioner offers herewith a good and sufficient surety for his entering in the Circuit Court of the United States for the Southern District of Illinois, on the first day of the next regular term thereof, a transcript of the record in this suit, and for paying all costs that may be awarded by said Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and
511 to accept said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States in and for the Southern District of Illinois; and he will ever pray, etc.

SAM'L H. LEATHE.

Samuel H. Leathe deposes and says: I am the above named petitioner. The foregoing petition is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

SAM'L H. LEATHE.

Subscribed and sworn to before me, this 6th day of April, 1894.

FRED B. MERRILLS,

[SEAL.] *Notary Public.*

Filed April 9, 1894.

THOMAS MAY, JR.,

Circuit Clerk, St. Clair Co., Ills.

Be it remembered that the following is a true and correct copy of the Bond for Removal of the above entitled cause to the Circuit Court of the United States in and for the Southern District of Illinois, to wit:

Know all men by these presents, that we, Samuel H. Leathe as principal, and Fred B. Merrills as surety, are holden, and stand firmly bound unto the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, in the penal sum of five hundred dollars, for the payment of which well and truly to be made unto the said Belleville and St. Louis Railway Company for the use of said Edward L. Thomas, its representatives and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

The condition of this obligation however, is such, that whereas the said Samuel H. Leathe has petitioned the Circuit Court of St. Clair county, Illinois, for the removal of a certain cause therein pending, wherein the said Belleville and St. Louis Railway Company, for the use of Edward L. Thomas is the plaintiff, and the said Samuel H. Leathe is the defendant, to the Circuit Court of the United States, within and for the Southern District of Illinois.

Now, if the said Samuel H. Leathe shall enter in the said Circuit Court of the United States, on the first day of the next term thereof, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was
512 wrongfully or improperly removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, the said Samuel H. Leathe and the said Fred B. Merrils have hereunto set their hands and seal- this the 6th day of April, A. D. 1894.

SAMUEL H. LEATHE. [SEAL.]
FRED B. MERRILLS. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair,* ss:

I, Fred B. Merrills, of said county, surety named in the above bond, being duly sworn, depose and say that I am a resident of said county and State, and am a property holder in said St. Clair county.

That I am worth the sum of Five Hundred Dollars over and above all my debts and liabilities, and exclusive of property exempt from execution.

FRED B. MERRILLS.

Subscribed and sworn to before me this 9th day of April, 1894.

THOMAS MAY, JR.,
Circuit Clerk.

Filed April 9, 1894.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair County, Illinois.

Be it remembered that the following is a true and correct copy of the order of the Court for the April term A. D. 1894, in the above entitled cause, to wit:

THE BELLEVILLE AND ST. LOUIS R. R. CO., for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

On the 11th day of April A. D. 1894, come the parties by their respective attorneys, and the defendant having filed his petition and bond for the removal of this cause to the Circuit Court of the United States in and for the Southern District of Illinois; and the Court having considered said petition and having approved said bond, and being fully satisfied of and concerning the premises, orders, considers and adjudges that this cause be removed to the Circuit Court of the United States in and for the Southern District of Illinois, and that the clerk of this Court certify the record of this cause to said Court according to the statute in such case made and provided.

513 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., clerk of the Circuit Court of St. Clair county, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of: (1) The praecipe for summons. (2) The summons and officer's return thereon. (3) The declaration. (4) The petition for removal of cause to the Circuit Court of the United States for the Southern District of Illinois. (5) Bond for removal of cause to the Circuit Court of the United States for the Southern District of Illinois. (6) The order of court of the April term A. D. 1894, being a complete record as the same appears on file and of record in my office in a certain cause lately pending in said Court, on the law side thereof, wherein The Belleville & St. Louis Railway Co., for the use of Edward L. Thomas, as plaintiff, and Samuel H. Leathe, defendant.

In witness whereof, I have hereunto set my hand and official seal of said Court, at Belleville this — day of May, A. D. 1894.

[SEAL.] THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Deputy.*

(Endorsed:) Filed May 15, 1894. James T. Jones, Clerk.

Afterwards, to wit: on the 6th day of June, A. D. 1894, it being one of the days of the regular term of said United States Circuit Court for said year, defendant filed the following plea:

In the Circuit Court of the United States for the Southern District of Illinois.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of E. L. THOMAS,
against
SAMUEL H. LEATHE.

Ass't. Damages, $60,000.

And the defendant, by Philip Barton Warren, of counsel, comes and defends the wrong and injury, when, etc., and says that he did not promise in manner and form as the plaintiff has above thereof complained against him; and of this he puts himself upon the country.

G. A. KOERNER,
Of Counsel for Defendant.

(Endorsed): Filed June 6, 1894. James T. Jones, Clerk.

514 Afterwards, to wit: said 16th day of January, at the January term of the Circuit Court of the United States for the Southern District of Illinois in the year of our Lord one thousand eight hundred and ninety-five the following proceedings were had in said court in said case, and entered of record, to wit:

WEDNESDAY, *January* 16, 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY
vs.
SAMUEL H. LEATHE.

Assumpsit.

On motion of paintiff, by E. L. Thomas, Esq., its attorney, leave is granted plaintiff to file an amended declaration herein, and the defendant is ruled to plead thereto by Monday, the 21st inst.

Afterwards, to wit: on said 16th day of January, at the January term of the Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, came the plaintiff, by Edward L. Thomas, its attorney, and filed in the office of the clerk of the said Circuit Court of the United States for the Southern District of Illinois an amended declaration in said cause, which is as follows—that is to say:

UNITED STATES OF AMERICA, *Southern District of Illinois, ss:*

In the United States Circuit Court, to the January Term, A. D. 1895.

The Belleville and St. Louis Railway Company, a corporation organized under the laws of the State of Illinois, which sues for the uses of Edward L. Thomas, the plaintiff, by Edward L. Thomas, its attorney, complains of Samuel H. Leathe, the defendant, of a plea of trespass on the case on promises. For that whereas the plaintiff on the 25th day of March, A. D. 1893, at the county of St. Clair aforesaid, being then the owner of a large tract of real estate, conveyed the same by deed of that date duly executed and acknowledged, and delivered to Samuel H. Leathe, the defendant, for and
515 in consideration of one dollar and other valuable considerations, moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff.

And plaintiff avers that said plaintiff then and there accepted said deed.

And the plaintiff further avers that the other valuable consideration moving from said defendant to said plaintiff was the promise and agreement of said defendant then and there made in consideration of said deed, and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties.

And plaintiff avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to wit: in the sum of sixty thousand dollars ($60,000), of which the defendant then and there had full notice.

And plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised and agreed to be paid by said defendant as part of the consideration of said deed.

And plaintiff further avers that said indebtedness to said Edward L. Thomas was not paid, but is still a subsisting indebtedness of plaintiff, and is long since due and payable.

And plaintiff further avers that afterwards, to wit: on the day and year aforesaid, at the county aforesaid, in consideration of the premises, defendant promised to pay plaintiff, for the use aforesaid, said sum of money when thereunto afterwards requested.

Second Count.

And, whereas, also, the defendant, on the 25th day of March, 1893, at the County of St. Clair, aforesaid, being then and there the owner of a large tract of valuable real estate, conveyed the same by deed of that date duly executed and acknowledged and delivered to Samuel H. Leathe, the defendant, for and in consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville & St. Louis Railway Company, plaintiff.

And the plaintiff avers that said defendant then and there accepted said deed.

And plaintiff further avers that the other valuable considerations moving from said defendant to said plaintiff, was the promise and agreement of said defendant then and there made in con-
515 sideration of said deed and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties.

And plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to wit: in the sum of Sixty Thousand Dollars ($60,000), of which defendant then and there had full notice.

And plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas, was part of the indebtedness of plaintiff then and there promised and agreed to be paid by said defendant as part of the consideration of said deed.

And plaintiff further avers that at the September term, A. D. 1893, of the Circuit Court in and for said County of St. Clair and State of Illinois, a court having full jurisdiction over such matters, the said Edward L. Thomas commenced an action against the said Belleville & St. Louis Railway Company to recover said amount so due him.

And plaintiff further avers that it caused the said defendant to be notified of the pendency of said suit, and authorized the said defendant to use its said name in defending said suit.

And plaintiff further avers that said defendant in pursuance of said notice employed counsel and filed pleas and entered into and upon the defense of said cause.

Plaintiff further avers that the issue in said cause was as to whether the amount claimed by said Thomas was then due and payable to him, the said Edward L. Thomas.

And plaintiff further avers that after a trial of said cause, upon evidence introduced by said defendant, as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in full force and effect and which the plaintiff is ready to show by the record thereof, here now shown in the court. And plaintiff avers that said judgment has not been paid, but remains still due and unpaid, and in full force and effect.

And plaintiff avers that afterwards, to wit: on the day and year aforesaid, at the county aforesaid, said defendant, in consideration thereof, promised the plaintiff to pay it the said amount of said judgment, according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested.

517 *Third Count.*

And, whereas, also, the plaintiff, on the 25th day of March, 1893, at the County of St. Clair aforesaid, being then and there the owner of a large tract of valuable land, conveyed the same by deed of that date duly executed, and acknowledged and delivered to Samuel H.

Leathe, the defendant, for and in consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville & St. Louis Railway Company, plaintiff.

And the plaintiff avers that said defendant then and there accepted said deed.

And plaintiff further avers that the other valuable considerations moving from said defendant to said plaintiff, was the promise and agreement of said defendant then and there made in consideration of said deed and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties.

And plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to wit: in the sum of Sixty Thousand Dollars ($60,000), of which the defendant then and there had full notice.

And plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised to be paid by said defendant as part of the consideration of said deed.

And plaintiff further avers that at the September term, A. D. 1893, of the Circuit Court, in and for said County of St. Clair and State of Illinois, a court having full jurisdiction over such matters, the said Edward L. Thomas commenced an action against the Belleville & St. Louis Railway Company to recover said amount due him.

And plaintiff further avers that it caused the said defendant to be notified of the pendency of said suit, and authorized the said defendant to use its said name in defending said suit.

And the plaintiff further avers that the defendant, in pursuance of said notice, employed counsel and filed pleas, and entered into and upon the defense of said cause.

Plaintiff further avers that the issue of said cause was as to whether the amount claimed by said Thomas was then due and payable to him, the said Thomas.

And plaintiff further avers that after trial of said cause, upon evidence introduced by said defendant, as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in
518 full force and effect, and which plaintiff is ready to show by the record thereof, here now shown in court. And plaintiff avers that said judgment has not been paid, but remains still due and unpaid, and in full force and effect.

And plaintiff further avers that before the trial of said cause, and while the same was standing for trial, the said defendant in his name and in the name of the Belleville & St. Louis Railway and the Belleville City Railway Company filed in said court a Bill for Injunction, against the said Edward L. Thomas, to enjoin him from proceeding with said cause, and from recovering a judgment against the said Belleville & St. Louis Railway Company, on said indebtedness; that among other things one of the issues made by said bill, and answer thereto, was as to whether the amount claimed by said Thomas from said Belleville & St. Louis Railway Company was then

due and payable, and whether said defendant had assumed by reason of said deed and as a consideration therefor, the payments of the debts of the said Belleville & St. Louis Railway Company of which the amount claimed by said Thomas was one. That upon said issue a full hearing was had, and it was then and there fully adjudicated and said injunction was denied, and said bill dismissed, and thereupon said judgment was rendered in said suit brought by said Thomas against said Belleville & St. Louis Railway Company for said sum of $53,022.23 and costs of suit.

And plaintiff avers that it was then and there fully determined and adjudicated by said court, that said sum was due and payable to the said Thomas, and that said defendant had assumed the payment of said indebtedness of said Belleville & St. Louis Railway Company, in consideration of the conveyance to him of said property by said deed as aforesaid; and that said court so determined and adjudicated the same, upon the voluntary coming into said court by the said defendant and asking by said bill an adjudication thereof. All of which the plaintiff here now shows to the court by the record and proceedings and judgment and decree of said court, in said causes, now here presented to the court.

And plaintiff avers that afterwards, to wit: on the day and year aforesaid, at the county aforesaid, said defendant in consideration thereof promised the plaintiff to pay it the said amount of said judgment, according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested; and although often requested, defendant has not paid said several sums of money, or any or either of them, or any part thereof to plaintiff for the use aforesaid, but to do so has hitherto and still doth refuse, to the damage of plaintiff for the use aforesaid of Sixty Thousand Dollars, ($60,000), wherefore it brings suit, &c.

By EDWARD L. THOMAS,
Plaintiff's Attorney.

519 (*Copy of Acct. Sued on.*)

Samuel H. Leathe, Dr., to Belleville & St. Louis Railway Company, for the Use of Edward L. Thomas.

To indebtedness of Railway Company to Edward L. Thomas, agreed to be paid by said Leathe in consideration of execution and delivery to him of deed of property of Railway Company	$60,000
To indebtedness of Railway Company to Edward L. Thomas, agreed to be paid by said Leathe in consideration of execution and delivery to him of deed of property of Railway Company, and so adjudicated by the Circuit Court of St. Clair County, Illinois, in case therein tried and defended by said defendant	$60,000
To indebtedness of Railway Company to Edward L. Thomas agree to be paid by said Leathe in consideration of execution and delivery to him of deed of property of Railway Company, and so adjudicated by the Circuit Court of St. Clair County, Illinois, in a cause brought by dedefendant and others against plaintiff	$60,000

Copy of Instrument Sued on.

The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar, to it in hand paid by Samuel H. Leathe, of St. Louis, and State of Missouri; and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land, situated in the County of St. Clair, and State of Illinois; all that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed, dated December 12, 1890, and recorded herewith reference being made to said deed for a more particular description thereof.

Also all the right of way, easements, grading and superstructure thereon acquired by or for the grantor, for the purpose of building a railroad between Belleville and East St. Louis.

And the grantor covenants and agrees to and with the said Leathe that it will upon demand convey by good and proper deed
520 of conveyance to said Leathe and his assigns, any land, easements, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

EDWARD L. THOMAS. [SEAL.]

[SEAL.] THE BELLEVILLE & ST. LOUIS RAILWAY CO.,

By EDWARD L. THOMAS, *President.*

Attest:

HENRY M. NEEDLES, *Secretary.*

We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose
[NOTARIAL SEAL.] names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state, that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument, for the uses and purposes therein set forth, as president of said company. That he is president of said company, and executed said deed as president,

by order of the stockholders of said company, whose names are subscribed thereto also. That said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1895.

A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock, p. m.

(Endorsed:) Filed January 16, 1895. James T. Jones, Clerk.

521 Afterwards, to wit: on the twenty-ninth day of January, at the January term of the Circuit Court of the United States, for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, the following proceedings were had in said court, in said case, and entered of record to wit:

TUESDAY, *January* 29, 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

This day came again the plaintiff by E. L. Thomas, Esq., its attorney, and the said defendant having failed to enter his appearance and plead pursuant to the rule of this court herein entered, was three times solemnly called, came not, but made default.

It is therefore considered by the court that the plaintiff has sustained damages by reason of the breaches of promises in its declaration mentioned, but because those damages are unknown, it is submitted to the court to assess the same.

Afterwards, to wit: on the first day of February at the January term of the Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, came the defendant by G. A. Koerner, his attorney, and filed in the office of the clerk of said court his motion to set aside the default in said case, which motion is as follows, to wit:

In the Circuit Court of the United States for the Southern District of Illinois, January Term, A. D. 1895.

BELLEVILLE & ST. LOUIS RAILWAY CO., for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Now comes the said defendant by his attorney, and moves the court to set aside the default entered in this case.

G. A. KOERNER,
Attorney for Defendant.

(Endorsed:) Filed February 1, 1895. James T. Jones, Clerk.

522 Afterwards, on said first day of February, in the year of our Lord, one thousand eight hundred and ninety-five, came the defendant by G. A. Koerner, his attorney, and filed in the office of the clerk of the Circuit Court of the United States for the Southern District of Illinois, his affidavit in support of said motion to set aside said default, which affidavit is as follows, to wit:

In the Circuit Court of the United States for the Southern District of Illinois, January Term, A. D. 1895.

BELLEVILLE & ST. LOUIS RAILWAY CO., for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Gustavus A. Koerner, being duly sworn, upon his oath says that he is an attorney for the said defendant in charge of this case; that he knows of the merits of the case thoroughly, and says that the defendant has a full and complete defense for all of the claims against him presented by said plaintiff, upon the merits, and that the said defendant is not indebted to the said plaintiff, upon any of the causes of action mentioned in said declaration.

Affiant further says, that on the seventh day of January A. D. 1893, the affiant proposed to Edward L. Thomas, for whose use the suit is brought, who is also an attorney, that the case should be set for trial in this court for the fifth day of February, 1895, and that the affiant prepared an agreement to that effect, in the shape of a letter addressed to the clerk of this court, and handed it to said Thomas; that the said Thomas said that he was not prepared to agree to a trial at that time, but in case he should find he was able to try it that day he would send the agreement to the clerk, sign it himself and advise affiant.

Affiant further states that the said Thomas afterwards signed said agreement and filed the same in this court on the eleventh day of January, 1895, but did not advise this affiant until the thirtieth

day of January, 1895, although affiant and said Thomas met almost every day, between the said seventh day of January and said thirtieth day of January.

Affiant further states, that he did not learn of the fact that an amended declaration had been filed in this case, or that a rule had been entered to plead to such amended declaration, until the thirtieth day of January, 1895, on which day he received all the information he had in regard to that subject, through a letter
523 written by the clerk of this court to affiant at Belleville, Illinois, which is dated at Springfield, January 26, 1895, and reads as follows:

G. A. Koerner, Esq., Belleville, Illinois.

DEAR SIR: In the case of The Belleville & St. Louis Railway Company, for use, &c., against Samuel H. Leathe, the rule to plead has been extended until Tuesday, the 29th inst. Default will be allowed then, if no plea is filed. Very truly yours.

JAMES T. JONES.

That said letter written on Saturday probably arrived at the affiant's office on Monday, the 28th, but on said 28th day of January said affiant visited his office but for a brief period, and did not find or notice said letter, and on the 29th of January said affiant, on account of illness of a member of his family, did not visit his office at all, nor receive his mail, said illness being the cause of his absence from his office, as stated, on the 28th of January as well; and it was not until the morning of the 30th of January that he received any notification whatever of any steps having been taken in said cause, which was in the shape of the letter as aforesaid; and on the morning of the thirtieth, after receiving said letter, affiant telegraphed at once to the clerk of this court to refile the plea of general issue to the amended declaration, which had been filed with the original declaration.

Affiant states that the said defendant has been guilty of no negligence whatever in the matter; that he is not in any manner indebted to the said plaintiff, and that said affiant has not been guilty of any negligence except as may be imputed to him from the facts as above stated.

Affiant further states, that he has since been informed that another notification had been mailed to him by the clerk of this court, at a prior date, but such notification was not received by affiant. And affiant for said defendant has moved that said default be set aside, and has filed the general issue to the amended declaration, and said defendant is now ready for trial.

G. A. KOERNER.

Subscribed and sworn to before me, this first day of February, 1895.

JAMES T. JONES, *Clerk.*

(Endorsed:) Filed February 1, 1895. James T. Jones, Clerk.

524 Afterwards, to wit: on the 4th day of February, at the January Term of the Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, the following proceedings were had, to wit:

MONDAY, *February* 4, 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

On motion of defendant by G. A. Koerner, Esq., his attorney, the default and judgment heretofore entered herein is vacated and leave granted defendant to plead.

Afterwards, to wit: on the twenty-sixth day of February, at the January Term of the said Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, the following proceedings were had in said court in said case and entered of record, to wit:

TUESDAY, *February* 26, 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

This day came as well the plaintiff by Messrs. Holder and Thomas, its attorneys, as the defendant by G. A. Koerner, Esq., his attorney, and the plaintiff dismisses its suit as to the first count of the declaration herein, and the issue joined is tried by the court, a jury being waived by stipulation in writing, and after hearing the evidence the further trial of the case is postponed until to-morrow morning.

525 Afterwards, to wit: on the 27th day of February, at the January Term of the Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-five, the following further proceedings were had in said court in said case and entered of record, to wit:

WEDNESDAY, *February* 27, 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

This day come again the parties by their attorneys, and the court having heard argument of counsel takes this case under advisement.

Afterwards, to wit: on the eighteenth day of February, at the January Term of the Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-seven, the following further proceedings were had in said court in said case and entered of record, to wit:

THURSDAY, *February* 18, 1897.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

This day came again the parties by their attorneys, and the court being now sufficiently advised in the premises, finds the issue for the defendant.

It is therefore ordered and adjudged, that the defendant recover of the plaintiff the costs and charge by him about his defense in this behalf expended, and that execution issue therefor.

526 Then afterwards, to wit: on the 21st day of April, it being one of the days of the regular January Term of said Circuit Court of the United States for the Southern District of Illinois, in the year of our Lord one thousand eight hundred and ninety-seven, came the plaintiff by Charles W. Thomas and Edward L. Thomas, its attorneys, and presented to the court a bill of exceptions in this case, which is as follows, to wit:

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court of the United States to the January Term, A. D. 1897.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

Be it remembered, that upon the trial of the said cause in said court, on the twenty-sixth day of February, the same being one of the days of the regular January Term of our said court, in the year of our Lord one thousand eight hundred and ninety-five, the following proceedings were had, to wit:

This cause being called for trial, the same was tried by the court, a jury being waived by the written agreement of the parties, which agreement is as follows:

UNITED STATES OF AMERICA:
Southern District of Illinois, ss:

In the Circuit Court, January Term, A. D. 1895.

BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

It is hereby stipulated by and between the above named parties, plaintiff and defendant, that the said cause may be tried before the court—the said parties hereby waiving a jury.

E. L. THOMAS,
R. D. W. HOLDER,
Attorneys for Plaintiff.
G. A. KOERNER,
Attorney for Defendant.

(Endorsed:) Filed February 26, 1895. James T. Jones, Clerk.

527 Whereupon the plaintiff to sustain the issues on its part introduced in evidence to the court the following record, to wit:

STATE OF ILLINOIS, *St. Clair County, ss:*

At a regular term of the Circuit Court within and for the county of St. Clair, and State of Illinois, begun and held at the court house, in the city of Belleville, in said county of St. Clair, on Monday, the

18th day of September, A. D. 1893, it being the third Monday of September, A. D. 1893, according to the act of the General Assembly, by the Hon. Alonzo S. Wilderman, one of the judges of the Third Judicial Circuit of the State of Illinois, of which the said county of St. Clair forms a part, the following proceedings were had, to wit:

Present: Honorable Alonzo S. Wilderman, Judge. J. D. Langley, Sheriff. M. W. Schaefer, State's Attorney. Thomas May, Jr., Clerk.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Edward L. Thomas, *per se*, and Knispel & Ropiequet, his attorneys, complains of the Belleville and St. Louis Railway Company, a corporation of the State of Illinois, of a plea of trespass on the case on promises.

For that, whereas, the defendant on the 21st day of August, A. D. 1893, in the county aforesaid, made its certain promissory note by which it promises to pay to plaintiff or order one day after date the sum of fifty-three thousand and twenty-two and twenty-three one-hundredths — ($53,022.23), with interest thereon at the rate of six per cent. per annum from date until paid; by means whereof defendant then and there became liable to pay to plaintiff the amount of said note, according to the tenor and effect of said note.

And whereas also the defendant on the — day of September, A. D. 1893, in the county aforesaid, was indebted to the plaintiff
528 in the sum of — dollars for goods, chattels and effects before that time sold and delivered by plaintiff to defendant at *his* request, and in the like sum for goods, chattels and effects before that time bargained and sold by plaintiff to defendant at its request; and in the like sum for work and services before that time done and bestowed, and material for the same work furnished by plaintiff for defendant at its request, and in the like sum for money before that time lent by plaintiff to defendant at *his* request, and in the like sum of money before that time *and* expended by plaintiff for the use of defendant at its request; and in the like sum for money before that time received by defendant for use of plaintiff; and in the like sum for interest in divers sums of money before that time forborne by plaintiff to defendant at its request, for divers spaces of time before then elapsed; and in the like sum of money found to be due from defendant to plaintiff, on an account then and there stated between them; and being so indebted, defendant in consideration thereof, then and there promises plaintiff to pay him on request the several sums of money so due him as aforesaid.

Yet, although the day of payment in said note specified has

elapsed, the defendant has not paid to plaintiff the amount of said note, or any part thereof, but refuses so to do, nor has the defendant, though requested, paid to plaintiff the several other sums of money above specified, or any or either of them, but refuses so to do.

To the damage of plaintiff of — dollars, and therefore he brings this suit, &c.

E. L. THOMAS AND
KNISPEL & ROPIEQUET,
Plaintiff's Attorneys.

Copy of Instrument and Account Sued On.

$53,022.23. BELLEVILLE, ILL., *August* 21, 1893.

One day after date, the Belleville & St. Louis Railway Company promises to pay Edward L. Thomas or order the sum of Fifty-three thousand and twenty-two and 23/100 dollars, with interest thereon at the rate of six per cent. per annum, until paid.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

529 The Belleville & St. Louis Railway Company to E. L. Thomas, Dr.

To Goods & Chattels & delivered.
To Goods & Chattels, & bargained & sold.
To Work & services, materials, &c.
To money lent.
To Money paid and for use of Deft., at its request.
To Money received by Deft. for use Plaintiff.
To money due for interest.
To money due on account stated.
Filed Sept. 8, 1893.

THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ill.

On the 20th day of September, A. D. 1893, the following plea was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RY. COMPANY.

Assumpsit.

1. Now comes the defendant and says it did not undertake and promise to pay to the said plaintiff in manner and form as the said

plaintiff has declared against it, and of this it puts itself upon the country, &c.

2. And for further plea in this behalf as to the first count in the declaration, defendant says *actio non*, because it says, that the supposed promissory note in that count mentioned was made without any good and valuable consideration, and this it is ready to verify, etc.

3. And for further plea in this behalf, defendant says *actio non* as to the first count in said declaration mentioned, because it says that the said Henry M. Needles has no power or authority to execute or sign said note, and this it is ready to verify.

4. And further as to the said first count in said declaration, defendant says *actio non* because it says the said plaintiff, assuming to be and acting as Director, President, General Manager and General Counsel of said defendant, directed said Needles to execute said note in said count mentioned, well knowing the same to be without legal or valuable consideration to the amount for which it is given, which action was in fraud of the rights of said defendants and of its
530 stockholders, wherefore the defendant says said note is wholly illegal and void, and this it is ready to verify, &c.

G. & G. A. KOERNER,
Attorneys for Defendant.

And on the 29th day of September, 1893, the following Affidavit of Merits was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Edward L. Thomas being duly sworn, upon his oath says he is the plaintiff in the above cause. That the demand of the plaintiff in the above entitled cause is upon the promissory note set forth in said first count of said declaration, and that there is due to the plaintiff from the defendant the amount of said note, and interest thereon from maturity thereof, at the legal rate, which at this date amounts to the sum of $53,278.50, after allowing all just credits, deductions and set-offs.

EDWARD L. THOMAS.

Subscribed and sworn to before me this 20th day of September A. D. 1893.

THOMAS MAY, JR.,
Circuit Clerk.

And on the 26th day of September, A. D. 1893, the following "motion to strike from files affidavits of merits," that is to say:

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Now comes the defendant and moves to strike from the files the affidavit of merits filed by plaintiff.

G. & G. A. KOERNER,
Att'ys for Deft.

531 And on the 7th day of October, 1893, the following "affidavit of meritorious defense" was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Samuel H. Leathe, being duly sworn, upon his oath says, that he is agent in this behalf of the said defendant in the above entitled cause, and that he verily believes that the said defendant has a good defense upon the merits of the whole of the demand made by the plaintiff in this suit.

SAMUEL H. LEATHE.

STATE OF MISSOURI, *City of St. Louis:*

I, C. D. Greene, Jr., a notary public, in and for said city and state, do hereby certify that by virtue of the laws of the State of Missouri, I have authority to administer oaths, and that Samuel H. Leathe, on this 26th day of September, 1893, appeared before me in person and subscribed and swore to the above affidavit. Term ends June 30, 1897.

[SEAL.] C. D. GREENE, JR.,
Notary Public.

And on the 31st day of October, the followng replication was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY.

Assumpsit.

And the plaintiff as to plea of defendant first above pleaded, and of which he puts himself upon the country, does the like.

And as to the second plea of defendant above pleaded, plaintiff says that he ought not to be barred from having his aforesaid ac-
532 tion, etc, because he says that the said promissory note was made and given for a good and valuable consideration and not without consideration as the plaintiff has in his plea alleged; and this he prays may not be inquired of — the country.

And as to the third plea of defendant above pleaded, plaintiff says he ought not to be barred, etc., because he says that the said note was not executed by said Needles without the power and authority as defendant has alleged, and this he prays may be inquired of by the country.

And as to the fourth plea of defendant above pleaded, plaintiff says that he out not — be barred, etc., because he says that he, the plaintiff, did not, assuming to act as director, president, general manager and general counselor of defendant, direct said Needles to execute said note, well knowing the same to be without legal and valuable consideration, and in fraud of the rights of defendant and its stockholders as defendant had in said plea alleged, and this he prays may be inquired of by the country.

And the plaintiff, by leave of court, etc., replying to said fourth plea of the defendant says, that he ought not to be barred by reason of anything in said plea alleged, because he says that the execution of said promissory note was obtained fairly and not by fraud and circumvention of plaintiff, as in said plea alleged, and this he prays may be inquired of by the country, etc.

By KNISPEL & ROPIEQUET,
Att'ys for Plaintiff.

And on the 9th day of November, A. D. 1893, the following "Demurrer to Replication" was filed, that is to say:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

Now comes the said defendant and says the several replications to the additional plea of defendant are each and all insufficient in law, etc.

G. A. KOERNER,
Att'y for Deft.

533 And on the 8th day of November, A. D. 1893, the following additional plea was filed, that is to say:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RAILWAY.

Assumpsit.

Additional Plea.

And for further plea in this behalf, defendant says *actio non*, because it says that heretofore, to wit: on the 24th day of January, A. D. 1893, the said defendant was a railroad corporation, with a nominal capital stock of $500,000, divided into 5,000 shares of $100 each, which shares according to the books of the said corporation were then held as follows, viz:

Edward L. Thomas, plaintiff in the suit	4,856	shares.
Bart S. Adams	62	"
John T. Taylor	50	"
Henry M. Needles	21	"
Alpheus Boling	1	"
Josephine Johnson	10	"
	5,000	"

Defendant further avers that afterward, viz: on the day and year last aforesaid, it was agreed by all the parties interested in said enterprise to acquire the charter of the Belleville City Railway Company, and under its charter construct the railroad theretofore contemplated to be constructed under the charter of the Belleville & St. Louis Railway Company, the said parties to the contract above set forth to have the same proportionate stock, and the said contract made in reference to the capital stock of the said Belleville & St. Louis Railway Company to be in force and govern.

And defendant states that the said Belleville City Railway Company has made bonds to the amount of $500,000, as provided by said contract, and that the sums due to said Edward L. Thomas for moneys expended in the construction of said railroad, which is the same amount sued for in this action, is payable according to the terms of said agreement, and not otherwise.

534 And defendant alleges that since the making of said contract, said Leathe has proceeded to carry out the same in good faith, has with his own means purchased real estate for terminals and right of way, and has expended large sums of money in the con-

struction of said railroad, for which he has not been reimbursed, the sum thus expended by him amounting to, viz: $100,000.

And this the defendant is ready to verify, wherefore, etc.

G. & G. A. KOERNER,
Attorneys for Def't.

And on the 23d day of November the following "6th plea" was filed, that is to say:

And for a further plea in this behalf, the defendant says that at the time the said note was given, viz: on the 21st day of August, 1893, the said defendant was not indebted to the plaintiff to the amount of said note, but to a less amount, viz: the sum of $5,000, and no more, and the directors of said company well knew said fact, and the said note was made in fraud of the said company and its stockholders, and this the defendant is ready to verify, wherefore it prays judgment, etc.

G. & G. A. KOERNER,
Att'ys for Def't.

And on the 24th day of November, A. D. 1893, the following "Replication to 5th and 6th pleas" was filed, that is to say:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

EDWARD L. THOMAS
vs.
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Assumpsit.

And the plaintiff as to the 5th plea of the defendant says *precludi non*, because he says that the said supposed contract in said plea set forth was not executed by the said supposed parties thereto at the time and place, etc., and of this the plaintiff prays may be inquired of by the country.

By KNISPEL & ROPIEQUET,
His Attorneys.

And the plaintiff for further replication to said plea, by leave of court, says *precludi non*, because he says that it is true, as alleged in said plea, that the said contract in said plea set forth was duly executed by said parties at the time when, etc., but plaintiff
535 avers that afterwards, to wit: on the 25th day of March, A. D. 1893, at, to wit: the county aforesaid, said contract was by said parties thereto, set aside, annulled and abrogated, and this the plaintiff is ready to verify, wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And for further replication to said plea by leave of court, plaintiff says *precludi non,* because he says that said contract has not been performed by the said Leathe and Chipley, but has by them been wholly abandoned and disregarded, and the said Leathe has entered into such other contracts as to render it impossible to carry out said contract, by reason whereof plaintiff avers that he is wholly discharged from the observance of the terms of said contract, to wit: at the county aforesaid, and this the plaintiff is ready to verify, wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And for further replication to said plea, the plaintiff, by leave of court, says, *precludi non,* because he says that after the time shown, etc., to wit: on the 25th day of March, 1893, said parties to said contract annulled and abrogated the same, and on said day, to wit: at the county aforesaid, said defendant, by resolution of its said stockholders, sold and conveyed all its property, to wit: said right of way and grading in said plea set forth to Samuel H. Leathe in consideration that said Leathe should pay the indebtedness of said Belleville and St. Louis Railway Company which said Leathe agreed to do, and said Leathe conveyed the same to the said Belleville City Railway and that the said Leath and the said Belleville City Railway then and there entered into the following contract, that is to say:

"At a meeting of the directors of the Belleville City Railway Company, held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25, 1893, the following proceedings were had, all the directors being present.

Mr. Bartlett S. Adams was elected president of the Company, and Mr. Charles W. Thomas, secretary. Mr. Taylor introduced the following resolution and moved its adoption:

Resolved, That a call of one hundred per cent. be made upon the capital stock of this company, payable on or before May 1, 1893, and that the secretary be directed to give written notice of this call to all the stockholders within twenty days. Mr. E. L. Thomas seconded the motion, and it was unanimously adopted. Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of $499,500 certain property described and referred to in his deed to the company of this
536 date, which was produced, but which was not delivered. Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give this company credit on said purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of its stock he may hereafter acquire and may credit on said stock calls the value of the services he may hereafter perform in floating this company's bonds and also the indebtedness due him from the company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted.

Mr. Charles W. Thomas then assigned and transferred upon the

stock transfer book of the company 4,995 shares of the capital stock of the company, subject to the calls made thereon, to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made at this meeting upon his 4,995 shares of the stock of this company upon the condition that he float the $500,000 of bonds of this company heretofore authorized to be issued, any of such bonds that he sells to net this company such a price as may hereafter be agreed upon between him and the board of directors of this company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the company to be accounted for by him at par, to the end that the railway of this company may at once be constructed and operated from some point within the original City of Belleville to the Mississippi river; and upon the further condition that Mr. Leathe protect this company from any decree foreclosing the mortgage to secure said bonds until one year after its said railway is in operation and that Mr. Leathe be requested to sign the record of the proceedings of this board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion and it was unanimously adopted.

I accept the terms of the foregoing resolution.

(Signed) SAMUEL H. LEATHE.

And the board adjourned to meet subject to the call of the president.

BART S. ADAMS, *President.*
CHARLES W. THOMAS, *Secretary.*

And plaintiff avers that said Mr. Chipley, Thomas and Adams then and there consented to the execution of said contract, by reason whereof, the said contract in said plea mentioned, was then
537 and there rendered impossible of performance and was then and there annulled and abrogated, to wit: At the county aforesaid, all of which the plaintiff is ready to verify, wherefore he prays judgment.

By KNISPEL & ROPIEQUET,
His Attorneys.

And as to said sixth plea plaintiff says, *precludi non,* because he says company was not indebted to said plaintiff only in the sum of $5,000 as in said plea alleged, and this he prays may be inquired of by the country, etc.

By KNISPEL & ROPIEQUET,
His Attorneys.

And on the 27th day of November, 1893, the following "demurrer to amended replication to fifth plea and to replication to sixth plea" was filed, that is to say:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court—September Term, 1893.

EDWARD L. THOMAS
vs.
BELLEVILLE & ST. L. RY. COMPANY.

Assumpsit.

1. Now comes defendant and demurs to the first amended replication of plaintiff to the defendants' fifth plea, and for special cause for demurrer says said replication presents an immaterial issue.
2. And demurs to the second replication to said fifth plea, and for special cause says, said plea does not set forth in what manner said contract mentioned in said plea was abrogated, etc.
3. And demurs generally and specially to the third replication to the said fifth plea, special causes: 1—Said replication is double. 2—Does not show what contracts were made by said Leathe, or to carry out said contracts. 3—That it does not show with whom such contracts were made.
4. And demurs to the fourth replication to the fifth plea, and says the matters therein set forth are no answer to the said plea, and are not of a nature to avoid the contract set forth in said plea. And defendant says the replication filed to plaintiff's sixth plea is not sufficient in law, and prays judgment, etc.

G. & G. A. KOERNER,
Defendant's Att'ys.

538 EDWARD L. THOMAS
vs.
BELLEVILLE & ST. LOUIS RY. CO.

Assumpsit.

And now, on the 20th day of September, A. D. 1893, come the parties by their respective attorneys, and leave is given the plaintiff to file an affidavit of merits with his declaration instanter, which is filed accordingly. On the 27th day of September, 1893, come again the parties by their attorneys, and time to plead is extended. On the 6th day of October, 1893, come again the parties by their attorneys and defendant's motion to strike affidavit of merits from the files is argued by counsel for the respective parties, and is by the court denied. And the court enters a rule on defendant to plead by October 10, 1893. On the 8th day of November, 1893, come again the parties by their attorneys, and leave is given defendant to file an additional plea, which is filed, and leave is given plaintiff to reply double. On the 10th day of November, 1893, come again the parties by their attorneys, and plaintiff's demurrer to additional plea is argued by counsel for the respective parties, and is by the court sustained, and leave is given to amend. And now, on the

28th day of November, 1893, come again the parties by their attorneys, and all pleas, except the general issue, is withdrawn, and all evidence to be given under that plea, and thereupon this cause is tried by the court by consent of parties, a jury being waived, and trial continued until December 13th, 1893. On the 13th day of December, 1893, come again the parties by their respective attorneys, and the trial of this cause is resumed, and the trial progresses, and the court, after hearing the evidence and arguments of counsel, and being fully advised in the premises, on the 21st day of December, 1893, the court finds amount due plaintiff to be fifty-three thousand and twenty-two ($53,022.23/100) dollars and twenty-three cents, whereupon the defendant moves the court for a new trial of this cause, which is argued by counsel for the respective parties, and is by the court taken under advisement to be decided as of this date. And now, on the 12th day of February, A. D. 1894, come again the parties by their respective attorneys, and this defendant's motion for a new trial heretofore taken under advisement on the 21st day of December, 1893, is by the court denied. It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the said defendant the said sum of fifty-three thousand and twenty-two ($53,022.23/100) dollars and twenty-three cents, together with the costs in this behalf expended, and that
539 execution issue therefor, said judgment to take effect as if rendered on the 21st day of December, A. D. 1893.

(To all of which the defendant excepts and prays an appeal to the Appellate Court of Illinois, in and for the fourth district, which is allowed upon the defendant filing its appeal bond in the penal sum of sixty thousand dollars, with security to be approved by the clerk of this court.)

Bond and bill of exceptions to be filed by February 24, 1894, and afterwards the court extends the time for filing appeal bond to February 24, 1894, and for filing bill of exceptions to March 15, 1894.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., clerk of the Circuit Court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of: 1. Declaration. 2. Defendants' plea. 3. Affidavit of Merits. 4. Motion to strike affidavit of merits from files. 5. Defendants' affidavit of meritorious defense. 6. Replication. 7. Demurrer to Replication. 8. Additional Pleas. 9. Defendants' 6th Plea. 10. Replication to 5th and 6th Pleas. 11. Demurrer to Amended Replication. 12. Order of the September Term, A. D., 1893, (the same being in the case of Edward L. Thomas *v.* The Belleville Ry. Co., being a complete record as the same appears on file of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Belleville, this 2d day of February, A. D. 1895.

[SEAL.]

THOMAS MAY, JR., *Clerk.*
By PHIL. H. SOPP, *Deputy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

I, A. S. Wilderman one of the judges of the Third Judicial Circuit of the State of Illinois, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, clerk of the Circuit Court of St. Clair County, aforesaid, (which county is in said Judicial Circuit) and keeper of the records and seal thereof duly qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere, and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 2d day of February, A. D. 1895.

A. S. WILDERMAN. [SEAL.]

540 STATE OF ILLINOIS, *St. Clair County, ss:*

I. Thomas May, Jr., clerk of the Circuit Court, in and for said county in the State aforesaid do hereby certify that A. S. Wilderman, whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, one of the judges of the Third Judicial Circuit of the State of Illinois (of which Judicial Circuit the said St. Clair county forms a part), duly commissioned and qualified; that full faith and credit are and of rights ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Belleville, this 2d day of February, A. D. 1895.

[SEAL.] THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Deputy.*

Plaintiff then introduced in evidence to the Court the following record, to wit:

STATE OF ILLINOIS, *St. Clair County, ss:*

At a regular term of the Circuit Court within and for the county of St. Clair and State of Illinois, begun and held at the court house, in the city of Belleville, in said county of St. Clair, on Monday, the 8th day of January, A. D. 1894, it being the second Monday of January, A. D. 1894, according to the act of the General Assembly, by the Hon. Alonzo S. Wilderman one of the judges of the Third Judicial Circuit of the State of Illinois, of which the said County of St. Clair forms a part, the following proceedings were had, to wit:

Present: Honorable Alonzo S. Wilderman, Judge. J. D. Langley, Sheriff. M. W. Schaefer, State's Attorney. Thomas May, Jr., Clerk.

541 STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court of said County, January Term, A. D. 1894.

SAMUEL H. LEATHE, THE BELLEVILLE AND ST. LOUIS RAILWAY CO., THE BELLEVILLE CITY RAILWAY CO.,

vs.

EDWARD L. THOMAS.

Bill for Injunction and Relief.

To the Honorable Judge of said Court, in Chancery sitting:

Your orators, Samuel H. Leathe, the Belleville and St. Louis Railway Company, The Belleville City Railway Company, respectfully show unto your Honor:

1st. That the Belleville City Railway Company is a corporation chartered by special act of the General Assembly of the State of Illinois, approved ——, 1867.

2d. That the Belleville and St. Louis Railway Company was a corporation organized under the general laws of the State of Illinois.

3d. That the latter company, as organized originally consisted of a capital stock of $50,000, which was subsequently, by the action of the stockholders, increased to $100,000, and still later to $500,000. At the time the capital stock of said company was at $50,000 it had been subscribed for as follows:

Edward L. Thomas held	495 shares
Henry M. Needles held	1 share
John T. Taylor held	1 share
John P. Hill held	1 share
Alpheus Boling held	1 share
Bart S. Adams held	1 share
Total	500 shares

4th. By resolution of the board of directors, authorized by meeting of stockholders, both held September 10, 1891, the capital stock of the said (latter) company was increased to $100,000, and Edward L. Thomas subscribed for 500 shares of the additional stock.

5th. By resolution of the stockholders, or, rather, subscribers to the capital stock of the said corporation, on the 27th day of October, A. D. 1892, and further by resolution of the board of di-
542 rectors of said corporation held November 28, 1892, it was resolved to increase the capital stock of said corporation to the sum of $500,000, and on that day the said Edward L. Thomas subscribed to 3,980 additional shares of said stock, and one Henry M. Needles to twenty shares.

6th. Your orators distinctly allege that none of said stock thus subscribed was ever paid into the treasury of said company.

7th. Your orators further state that it was the intention of the

promoter of this corporation, Edward L. Thomas, to construct and equip a railroad from the city of Belleville, Illinois, to some point on the Mississippi river opposite to the city of St. Louis.

9th. That the said Edward L. Thomas has made some progress in the construction of said railroad; had purchased some rights of way and graded some portions of the road bed, for which purposes he had expended some money, although to what amount your orators are unable to state, and created some considerable indebtedness, both individually and for said corporation, the amount of said indebtedness.

10th. That the said Edward L. Thomas had interested one W. A. Adams in said enterprise, who is now deceased, and said Adams, during a period of time running from the 1st of September, 1890, to the 1st of April, 1891, had expended for the purchase of lands for right of way and perhaps other purposes, and the grading of the road-bed, a sum, the exact amount of which is unknown to your orators, but which they state upon information and belief to exceed $20,000.

11th. That about the first of the year 1893, the said Adams then having died, the condition and prospects of said corporation became desperate, and there was imminent danger of the entire amount invested therein being lost, the said Thomas having expended in its behalf all he had or could obtain or borrow from others, and it being impossible for him to sell or pledge for value any of the bonds which had been issued, except as hereinafter stated.

12th. That about that time or shortly before, your complainant, who is a citizen of the State of Missouri, residing at St. Louis, was approached by agents of said Thomas and solicited to take an interest in said enterprise, and began to investigate it, and on the 12th day of January, A. D. 1893, the said Edward L. Thomas addressed a letter to your orator, Samuel H. Leathe, which was duly received by him, and which is as follows:

543 BELLEVILLE, ILL., *January 12th*, 1893.

Samuel H. Leathe, Esq.

DEAR SIR: Herewith is presented an itemized account of money expended in the matter of the Belleville & St. Louis Railway Company by Captain W. A. Adams and Edward L. Thomas.

The amount in account with organization is some $1,200 less than account first rendered, because of the leaving off of fee of trustee for new bonds amounting to $500 and engraving new bonds of $475 and adding some small new items accruing in this month. The amount of sundries it increased by some $500 by items new for this month and fee of Mr. C. P. Knispel, overlooked and really agreed upon since making statement.

The amount of right of way is decreased by amounts charged for right through lands purchased by me and which I supposed would be retained by me, but upon conversation with you I have put into the account, and deducted the amount charged for right of way.

The amount of construction account is the same as rendered. The

amount of coal lands is increased by interest for one month, bringing it up to Jan. 1, 1893.

The land account is added, and if thought best, the land will be transferred to the company. There are incumbrances on the land amounting to $3,500 which must of course be paid by me if land is taken by the company.

The land is suited to our purposes and I am willing to deed it or retain it, charging me with what company owes for it. I have of course put in sums not yet liquidated by me but which can either be assumed by the company or paid by me as per account and which I will then pay. This is particularly so in right of way account.

The late grading is estimated but on consultation with the engineer, we concluded it was about right. Of course this is to be calculated and charged according to calculation. It will, however, not exceed amount stated and will likely run several thousand yards below the estimated quantity.

The right of way contracts are binding upon me, but it makes no difference as to how they are charged or when paid, the right will be granted and no loss can result to the company either by crediting me or assuming payment itself.

In this connection let me add, that several of the contracts were so drawn that no right of way was to be paid if coal was purchased, and I believe that nearly all can be done away with, if coal is taken and one-fourth cash paid for it.

The coal account is as mentioned in the same condition.

Mortgage and notes given by me and still to be paid.

544 There are no outstanding debts of the company but $3,000 advanced me by parties with whom I had a contract. Four notes were given and the understanding is that they are not to be paid until the enterprise is on its feet or bonds sold. One note of $750 as I mention has two bonds up as collateral, and to get these bonds will have to be paid.

Everything I could raise has been put into this enterprise and many shifts made in order to continue along so as to complete the grading.

I have deserted my business since January, 1890, and while I do not ask for any compensation for the services performed, I am satisfied the enterprise has been carried on and brought to its present stage for less money than any other enterprise of a like nature. In the right of way above we have saved over one-half, and while our grading costs considerable when it is considered that it is nearly of a width for two tracks in all the heavy work it will be found to be reasonable.

I do not desire to make one cent out of this enterprise except by its operation and feel confident that the amount I shall receive will not more than pay obligations incurred in this work.

I have not added the $16,000 for my coal but am ready to comply with my contract as regards that matter at any time if it is thought best when a final consultation is had.

I am willing to abide by this statement and will make any necessary instruments to carry it out, leaving in your hands funds that

would come to me, until all matters are paid and satisfied, so that the company would be kept whole.

The proposition which I now make will leave you individually $255,000 of the R. to stock myself and Bart S. Adams $166,700, and Mr. Chipley the balance, or $78,300. This proposition to be maintained in any other company formed or purchased.

Out of amount to Bart Adams and myself, we have some to surrender to others. Of course you would want to be treasurer, and would perhaps like to have Mr. Chipley president. This can be arranged to your satisfaction, and three directors, yourself, Mr. Chipley and Bart from St. Louis; and four, Mr. Taylor, Mr. Needles, our present secretary, myself and Mr. Boling from Illinois, as the law requires a majority to live in that state. I feel confident that we can make a success of this enterprise and hope you will conclude to take hold of it and complete it. Having everything I have in it, I feel that I am unable to carry it much further, and have largely incurred the liabilities I have, because of my desire to prevent loss to the heirs of Capt. Adams, to whom I was under great obligations for kindness done and favors shown me.

Respectfully, etc.,

(Signed) EDWARD L. THOMAS.

545 That thereupon, to wit: on the 24th day of January, A. D. 1893, the negotiations carried on between the parties then interested primarily in said enterprise, viz.: the said Edward L. Thomas and one Bartlet S. Adams, who was representing the estate of his father, W. A. Adams, above mentioned, entered into an agreement in writing with your orator, Samuel H. Leathe and one Lucien M. Chipley, which is in words and figures as follows, to wit:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 5 per cent. bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750 with interest, in St. Louis.

Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas.

Edward L. Thomas to have $104,000 of stock; Bart S. Adams, $50,000; and John T. Taylor, $12,700; each party to receive back amounts advanced to the enterprise as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered, and said Leathe to receive amount to be advanced by him and balance to go into treasury of the railway company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

Dated Jan. 24, 1893.

(Signed.) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement, I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the statements made in my letter to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24, 1893.

(Signed.) EDWARD L. THOMAS.

546 14. Your orators further show that said Leathe on his part proceeded at once to carry out said agreement. That he did advance the amount necessary to take up four bonds of the company then held by Mrs. Johnson, viz.: $1,500 and Third National Bank (St. Louis, Mo.) $750.

15. Your orators further show that when said Leathe asked for the transfer to him of the shares of the stock to which he was entitled by said agreement, the following state of facts developed:

There had at no time been issued by said company, more than one thousand shares of capital stock of one hundred dollars each, and said capital stock was practically all in the control, and in the name of the said Edward L. Thomas and one Bart S. Adams, except ten shares held by one Mrs. Johnson. Of this amount in carrying out said agreement, the said Bart S. Adams delivered to your orator Leathe, 100 shares, and the said Edward L. Thomas claimed to own 875 shares, which he attempted to deliver to said Leathe, but failed, inasmuch as the Third National Bank of St. Louis, when said bonds were deposited, declined to deliver them to the said Thomas or at his request to your orator Leathe, and your orator S. H. Leathe is the equitable holder of all of said shares, and now in possession thereof.

And your orators allege that the fact that by the resolutions of the stockholders and board of directors hereinabove referred to, the capital stock of said corporation was increased, first to one hundred thousand dollars, and then to five hundred thousand dollars, is of no significance or importance, inasmuch as said increase was all or practically all subscribed for by said Thomas, and he and said Adams were the only persons who had any substantial interest therein, and their contract with said Leathe, above set out, covered all the stock of said corporation, be it $50,000, $100,000, or $500,000, the purpose and effect of said contract being to convey two-thirds of the capital stock, issued or not issued, *to* said Leathe and Chipley.

And your orators further show, that, by said contract, he, said Leathe, became the equitable holder of all of the stock held by the said Thomas and said Adams, and that by the expression in said contract, or in the addition thereto, wherein the said Thomas agrees

to leave in the hands of the said Leathe all sums coming to him as guarantee of the statements made in his letter of January 12th, and as security to hold until all matters are fully arranged, meant that all bonds, stocks and other papers of value, belonging to him, and having reference to or connection with, said enterprise, should remain with said Leathe.

16. And further your orators show, that said Leathe has energetically proceeded, since the making of said contract, to carry
547 out the provisions thereof; that he at once began the necessary purchase of real estate for terminals and further right of way, and in constructing the railroad, and has thus expended and incurred personal obligations for said purposes, a large sum of money, viz.: more than one hundred thousand dollars.

17. Further your orators show, that, subsequent to the making of this contract, it was determined by all the parties interested in said enterprise to acquire a charter, granted by the General Assembly of the State of Illinois, by an act approved ——— —, 1887, incorporating the Belleville City Railway Company, which charter your orator, Leathe, was informed was wholly owned and controlled by one Charles W. Thomas, brother of the said Edward L. Thomas. Said Leathe, while he assented to the purchasing of this charter, declined to pay anything, either in money or in stock or in bonds therefor, but was willing to substitute the said charter *to* the charter of the Belleville and St. Louis Railway Company, which had been chartered under the general law.

The nominal capital stock of the Belleville City Railway Company had been fifty thousand dollars, divided into five hundred shares of one hundred dollars each; but in order to equalize it with the nominal capital stock of the Belleville & St. Louis Railway Company, which, as before stated, had been increased by resolution to $500,000, the said Charles W. Thomas, controlling the Belleville City Railway Company, caused resolution of stockholders to be prepared and spread upon the record books of said corporation to $500,000, and himself subscribed for the remaining 450,000 dollars. This was done on the 11th day of March, A. D. 1893.

18. Thereupon, in pursuance of the plan thereafter to carry on the enterprise of constructing, equipping and operating said railroad between the City of Belleville and the Mississippi River, certain formal proceedings were had by the board of directors of said corporation, which were rendered necessary in order to place the legal title to the property in conformity and in accordance with the change by which the said Belleville and St. Louis Railway Company deeded all its property to your orator, Leathe, and he in turn deeded the same to the Belleville City Railway Company. Copies of said deeds are hereby submitted as Exhibits "A" and "B" respectively, and made a part of this Bill of Complaint.

19. And your orators further state, that on the 25th day of March, A. D. 1893, the said Charles W. Thomas assigned 4,995 shares of the capital stock of the Belleville City Railway Company to your orator, Leathe, and immediately thereafter, and as provided for by said contract hereinbefore set out, between said Leathe, Chip-

ley, Thomas and Adams, the said Leathe, your orator, as-
548 signed to said Edward L. Thomas sufficient of the shares of the capital stock to make his holdings 770 shares, and to said Charles W. Thomas sufficient of said capital stock to make his holding 250 shares, or together 1,020 shares, of the value of, at par, $102,000, substantially the amount agreed upon by and between said parties in said contract, as the proportion in which the stock should be held; the transfer of stock to said Charles W. Thomas being made at the request of said Edward L. Thomas, and representing part of the consideration paid to said Charles W. Thomas for the use of the charter of the Belleville City Railway Company, which the said Edward L. Thomas agreed should be paid for out of his stock. And further, your orator, Leathe, then and there assigned, in conformity with said contract to Bartlett S. Adams, sufficient shares to make his holdings $50,000 at par value of said stock, and to Lucien M. Chipley $78,300 of said stock at par value, that is to say 783 shares, and that the said Leathe, your orator, and the said Chipley, became the holders of two-thirds of said capital stock and said Thomas and Adams of one-third, carrying out the said contract in letter and spirit.

20. Your orator further shows that certain formal proceedings were had at meetings of stockholders and directors of the said corporations, on the 25th day of March 1893, the exact wording and form of which is set forth in Exhibit "C" to this Bill, which is made a part hereof, and reference thereto hereby made; also Exhibit marked "D" which is made a part hereof and reference thereto hereby made.

Exhibit marked "C" contains the action of the stockholders and Directors of the Belleville and St. Louis Railway Company, and Exhibit marked "D" contains the action of the stockholders and Board of Directors of the Belleville City Railway Company, and your orator Leathe states that he left the formulation of the words to be used in transacting such formal business, to said Edward L. and Charles W. Thomas, who are both learned in the law, but he alleges that neither in intention or act did the said proceedings change or in any manner affect the position *inter sese*, which was fixed and determined by the said contract of January 24th, 1893, under which your orator Leathe had theretofore proceeded and has since proceeded in good faith and with all possible energy.

21. Further, your orator Leathe shows unto your Honor, that he has as controlling the said Belleville City Railway Company, caused bonds in the sum of $500,000.00 to be executed, and a mortgage to be executed by said corporation to secure the same, but your orator (Leathe) further shows that since the first day of May of this year the condition of the money markets of the country have been unfavorable to the selling or placing advantageously securities of this character, and none of said bonds are as yet sold.

549 22. Your orators further show that at the time the said contract was made, hereinbefore set forth, there was in existence a corporation formed under the general laws of the State of Illinois, called the Crown Coal Company, the Capital Stock of which

was owned and controlled by the said Edward L. Thomas, Bart S. Adams and one John T. Taylor. The capital stock of the said corporation was nominally $30,000.00, which according to the record books of said corporation was held as follows: each share at par being one hundred dollars:—

Edward L. Thomas held	58 shares.
Bart S. Adams held	118 shares.
John T. Taylor held	48 shares.
Said three parties jointly held	76 shares.
Total	300 shares.

And it is claimed by said parties that there had been paid in (actually) upon said capital stock as follows:

Edward L. Thomas	$600 00
John T. Taylor	500 00
Bart S. Adams	6,300 00
T. A. Meysenburg	1,500 00
Total	$8,900 00

The stock of said Meysenburg had however been acquired by said Thomas, Taylor and Adams. And your orators allege that the property and capital stock of said corporation was included in and made a part of the subject-matter of said contract of January 24, 1893; and it was determined to increase the capital stock of said corporation to the sum of $200,000.

23. Further, your orators show that your orator Leathe had acquired by his own means large tracts of coal lands and several tugs, boats and barges plying the Mississippi river, expending large sums of money therefore, to wit: about $100,000, and on the 25th day of March, A. D. 1893, the capital stock of said Crown Coal Company was, by regular action of its stockholders, increased to $200,000, and your orator Leathe became a subscriber to the amount of 1,700 shares, of the par value of $100, and the name of the corporation was changed to the Crown Coal & Tow Company, the said tugs and barges having been acquired from a corporation known as the Western Coal & Tow Company, a corporation the business of which it was desired to continue by the new company. And by resolution of the shareholders, duly passed and recorded in the office of the Secretary of State of Illinois, and in the Recorder's office of St. Clair County, Illinois, the objects of the Crown Coal & Tow Com-
550 pany, which theretofore had been confined to the mining and selling of coal, was enlarged to include the power and authority to manufacture and sell electricity and electric light and power of all kinds; and the power to manufacture and sell ammonia, gas and all other products of bituminous coal, and the power and authority to tow boats and barges and transport coal and other freight on the Mississippi river and its tributaries, and charge and collect toll therefor, and to deal in sand, to mine and deal in clay and to

manufacture and sell products thereof, and to quarry and deal in stone and rock.

24. Further, your orators show that on the 25th day of March, A. D. 1893, the same day the transfer hereinbefore set out between said railroad companies and said Leathe were made, he, the said Leathe, transferred all his purchases made on behalf of said coal enterprise to the said Crown Coal and Tow Company, and assigned the capital stock which he had subscribed to the various parties in the same proportion as they held the stock of the said Belleville City Railway Company, all in accordance and in performance of the said agreement and contract of January 24, 1893, which form- and still forms the basis of the rights of the parties interested in said companies as between themselves. Your orator Leathe has, therefore, now invested in said Crown Coal & Tow Company the sum of about $100,000, while accepting as true the statement found in the record book containing the minutes of the Crown Coal Company, the said Thomas, Taylor and Adams have together invested $8,900, of which amount your orator Leathe furnished to them the sum of $4,500, which they still owe him. And your orators show that the said Edward L. Thomas, on an investment of $600 and that part of the $4,500, which may be as between the said parties equally due from him on the amount borrowed from your orator, yet is holder, as per the books, of 328 shares of stock of said Crown Coal & Tow Company (except so much thereof as he has since transferred to his wife, Mary O. Thomas), and on his account your orator also transferred to said Henry M. Needles 8 shares, and to Charles W. Thomas 100 shares, making in all 416 shares held by him or transferred to others on his account, on the books, on the nominal investment made by him.

25. Your orators further show that notwithstanding the premises, after the said contract had been made, and after your orator Leathe had become the equitable owner of all the capital stock, that the said Thomas had theretofore held in the said Belleville & St. Louis Railway Company and of the stock of the said Bart S. Adams in said company, in fact the owner and holder of all said capital stock of the Belleville & St. Louis Railway Company; and after the deed
551 had been made by which the legal title of the property of said corporation had been passed to the Belleville City Railway Company in manner and for the purposes hereinbefore set forth, to wit: on the 21st day of August, 1893, the said Edward L. Thomas caused a fraudulent meeting of the former directors of said Belleville & St. Louis Railway Company to be held, and caused a resolution to be passed, among other things directing the secretary of said company, (and one Henry M. Needles was acting as such), to execute and deliver to said Edward L. Thomas the promissory note of said company for the sum of $53,022.23, due one day after date and bearing interest at the rate of six per cent. from maturity. The said Needles thereupon executed and presumably delivered to said Edward L. Thomas a paper writing, of which the following is a copy:

$53,022.23. BELLEVILLE, ILL., *Aug.* 21, 1893.

One day after date The Belleville & St. Louis Railway Company promises to pay to Edward L. Thomas or order, the sum of Fifty-three thousand and Twenty-two 23/100 Dollars, with interest thereon at the rate of six per cent. per annum until paid.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

26. Your orators allege and specifically charge that said action of the persons claiming to act as the Board of Directors, who were Edward L. Thomas, John T. Taylor, Henry M. Needles, Alpheus Boling and Bart S. Adams, was void; that they acted without power or shadow of authority; that neither of them had any substantial interest in the corporation for which they were then pretending to act. And your orators further charge that said action was fraudulent inasmuch as the Belleville & St. Louis Railway Company at the time of such action was not indebted to said Edward L. Thomas to the amount of said note. And your orators further show that whatever amount the said Thomas may have had a just claim against the Belleville & St. Louis Railway Company for money expended and labor on account of the construction of said railroad he has no claim which is now due or enforcible against said railroad, and he should not be allowed to procure judgment thereon, because all such claims were by the terms of said contract hereinbefore recited to be adjusted in a manner satisfactory to the parties interested therein, to wit: the said Belleville & St. Louis Railway Company, Samuel H. Leathe, Bart S. Adams and the said Edward L. Thomas, and that the amount when so ascertained and adjusted was to be paid under the terms and conditions of said contract out of the proceeds of the bonds to be issued by said company, after and subject to the payment
552 from the same source, of any and all sums which might be expended by your orator, Samuel H. Leathe in completing the construction of said railroad. And your orators aver that under the terms and conditions of said contract, the said sums so laid out and expended by the said Thomas and constituting part of the consideration for said note which is not *per se* fraudulent, were not to be a charge or claim against said railroad company or its assets and effects, until all amounts laid out and expended by your orator, the said Leathe, should be paid; and your orators aver that the claim of the said Edward L. Thomas for money so laid out and expended by him, whatever the amount, is subject to and is postponed by virtue of said contract, to the claim of your orator Leathe, for moneys expended and to be expended in building and equipping said road, and is payable only after adjustment, out of the proceeds of the bonds of said railroad company, as hereinbefore set forth, and after the satisfaction of all claims due your orator Leathe, for money by him advanced or to be advanced for the building and equipment of said railroad.

And your orator, Samuel H. Leathe, shows to your Honor that in furtherance of said enterprise and for his own protection and that

of his associates, including the said Edward L. Thomas, he proposes as soon as the condition of the market allows, to use all energetic means to realize on said bonds.

And your orators charge that all said persons who as directors pretended to authorize the execution of said note, were cognizant of the facts above set forth, and as one instance to show this your orators allege that the said Alpheus Boling has brought suit against the Belleville City Railway Company to recover in his own name the sum of $6,000, which sum is also included in the said claim of Edward L. Thomas.

27. Further your orators show that the said Edward L. Thomas has commenced a suit at law against the said Belleville and St. Louis Railway Company in this court, in which he seeks to recover on said note and on the common counts.

28. Further your orators show that assuming to act with the approval of said persons pretending to act as directors, the said Edward L. Thomas has filed a Bill in Chancery in this court, in the name of the Belleville and St. Louis Railway Company; to which he has signed his name as solicitor for complainant, against the said Belleville City Railway Company; the prayer of said bill is for vendor's lien to be decreed in favor of the complainant therein, against the property of the Belleville City Railway Company, claiming that the transfer hereinbefore set out of the legal title of said property to have been a matter of barter and sale, for which the latter named company was indebted to the former, while in truth and in fact, said Thomas and said pretended directors well
553 knew that such transfer was a mere formal act, to carry out the contracts and understanding between the parties in interest, and that said Belleville City Railway Company is in nowise indebted to said Belleville and St. Louis Railway Company.

29. Your orators further state that the said suits tend to injure and delay and hamper the enterprise upon which the said Leathe has entered with the said Thomas and others, as hereinbefore set out, and creates confusion in the affairs of the said Belleville City Railway Company and the said Crown Coal Company; that these proceedings will materially affect the salability of the bonds of said Belleville City Railway Company, from the proceeds of which your orator Leathe as well as said Thomas, are to receive a return for the moneys expended by them in furtherance of said enterprise, according to the contract between them; that they can have no beneficial result to either party if carried on at law, and it may be difficult and certainly very inconvenient to defend the said suit at law of said Edward L. Thomas *v.* The Belleville and St. Louis Railway Company, inasmuch as all the facts are more properly cognizable in a court of equity.

In consideration of the premises, and as your orators can have no adequate relief at law, your orators pray that said Edward L. Thomas be made defendant hereto. That a writ of summons be issued commanding him to appear at the next term of this court, and answer each and every allegation thereof, but not under oath, the oath being hereby waived, and that at once a temporary writ of injunction may issue from this Honorable Court restraining the said

Edward L. Thomas from further prosecuting the said suit at law, now pending in this court wherein he is plaintiff and the Belleville and St. Louis Railway is the defendant, in which suit he declares upon the promissory note hereinbefore set out and on the common counts. And that upon a final hearing your Honor may decree that the said promissory note on which said suit at law is based was fraudulently issued without consideration, and is void. And your orators pray that said decree may annul or cancel the said promisssry note, and make the temporary injunction perpetual, etc. And may your Honor grant such other and further relief, as the nature of the case may require, and to equity appertain, etc.

THE BELLEVILLE CITY RAILWAY CO.
BELLEVILLE & ST. LOUIS RAILWAY CO.
SAMUEL H. LEATHE.

G. & G. A. KOERNER &
J. M. HOLMES, *Sols.*

554 Samuel H. Leathe, being duly sworn, on oath states that the allegations of the above bill are true; that he is the president of the said Belleville City Railway Company and the holder of shares of the Belleville and St. Louis Railway Company, as in said bill set forth.

SAMUEL H. LEATHE.

Subscribed and sworn to before me this 20th day of November A. D. 1893.

Interlineations made before signing.

[NOTARIAL SEAL.] FRED. B. MERRILLS,
Notary Public.

EXHIBIT "A."

The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis and State of Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land, situated in the County of St. Clair and State of Illinois:

"All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

"Also all the rights of way, easements, grading and superstructures thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis."

And the grantor covenants and agrees to and with said Leathe, that it will upon demand convey by a good and proper deed of con-

veyance to the said Leathe or his assigns any land, easements, right of way, privilege and immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

[Belleville & St. Louis Railway Company. March 23, 1889.]

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

555 We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to be to be the persons whose names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to said instrument for the uses and purposes therein set forth, as president of said Company. That he is president of said Company and executed said deed as president by order of the stockholders of said Company whose names are subscribed thereto also.

That the said Needles is the secretary of said Company, and that he attached the seal of said Company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

[NOTARIAL SEAL.] A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock P. M.

Recorded, book 224—p. 192.
Exhibit A.

EXHIBIT "B."

Samuel H. Leathe, widower, of the City of St. Louis and State of Missouri, the grantor, in consideration of the sum of Four Hundred and Ninety-nine Thousand Five Hundred Dollars to him paid by the Belleville City Railway Company, a corporation of the State of Illinois, duly organized and existing under and by virtue of an act

of the General Assembly of said last-named state entitled "An act to incorporate the Belleville City Railway Company," approved February 25, 1867, hereby grants, bargains, sells and conveys unto the said Belleville City Railway Company all the following described lands, tenements, easements, and rights situated and being in the County of St. Clair and State of Illinois:

556 Lot number two hundred and thirty-three (233), in the third subdivision of Cahokia Commons, with all accretions thereto.

Also all that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the Belleville & St. Louis Railway Company by deed bearing date December 12th, 1890, and recorded herewith, a reference to said deed being made for a more particular description, together with all the grading and superstructures thereon.

Also all the rights of way and easements conveyed to the said grantor by the following deeds:

From Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Maria Helena, his wife, dated March 1, 1893, and recorded in said recorder's office in book 224, and page 170.

From Mary Helena Voellinger and Peter, her husband, dated March 1, 1893, and recorded in said recorder's office in book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated March 8, 1893, and recorded in said recorder's office in book 228, page 124.

From Alois Forst and Catherine, his wife, and Christostomus Boul and Mary Ann, his wife, dated May 13, 1893, and recorded in said recorder's office in book 224, page 183.

Also all the lands, easements, rights of way, grading and superstructures thereon, conveyed to the grantor by the Belleville and St. Louis Railway Company by its deed of even date herewith recorded herewith to which reference is made, the grantor hereby covenanting and agreeing to and with the said grantee to convey to it on demand any land, easements, right of way, privilege or immunity which he may hereafter acquire frm the said Belleville and St. Louis Railway Company under the covenants of its said deed.

Also the following described lands in St. Clair County: all that part of Lot 69 of the Cahokia Common Fields, lying northwest of the Broilette creek as the same crosses said land, being part of surveys 104 and 105 as per plat recorded in said recorder's office in book E, page 16. Also Lot 72 on Hilgard's plat of the Cahokia Common Fields as recorded in said recorder's office in plat book "E," page 16. Also Lot 3, containing twenty-five acres, being part of the west half of the north-east quarter and the north part of the west half of the south-east quarter of section nine, township one north, range

557 nine west, as shown on plat recorded in said recorder's office in plat book "A," page 395.

Dated this 25th day of March A. D. 1893.

SAMUEL H. LEATHE. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public, in and for said county, in the State aforesaid, do hereby certify that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein, including the release and waiver of the right of Homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

HENRY M. NEEDLES,
Notary Public.

[NOTARIAL SEAL.]

Filed for record, March 29, 1893, at 4:50 P. M.
Recorded book 224–195.
End Exhibit "B."

EXHIBIT "C."

BELLEVILLE, ILL., *March 25th*, 1893.

At a meeting of the Board of Directors of the Belleville and St. Louis Railway Company, the following proceedings were had:

Present: Bart S. Adams, John T. Taylor, Alpheus Boling and Henry M. Needles. Meeting called to order by John T. Taylor, vice-president, in the absence of John S. Hill, president. The resignation of John S. Hill as president and director of said company, is presented, and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board, and Edward S. Thomas was elected to fill the vacancy. On motion Edward L. Thomas was elected president of said company. There being no further business the board adjourned.

EDWARD L. THOMAS,
President.

HENRY M. NEEDLES, *Secretary.*

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BELLEVILLE, ILLINOIS, *March* 25, 1893.

At a meeting of the stockholders of the Belleville & St. Louis Railway Company, the following proceedings were had:

Present:

Bart S. Adams, owner of	62 shares.
John T. Taylor, owner of	50 shares.
Henry M. Needles, owner of	1 share.
Alpheus Boling, owner of	1 share.
Edward L. Thomas, owner of	876 shares.
Josephine Johnson, by proxy, owner of	10 shares.
Total	1000 shares.

And Edward L. Thomas, owner of 3980 shares.
Henry M. Needles, owner of 20 shares new stock.
Total, 5000 shares stock.
On motion Bart S. Adams is elected chairman of stockholders' meeting, and Henry M. Needles secretary.
Edward L. Thomas offered the following resolution: "Be it resolved, That the president and secretary of this company be authorized and directed to trasfer and deed to Samuel H. Leathe all of the property, rights of way, easements and grading of this company as per deed presented, and bearing date this 25th day of March, 1893." Which resolution was unanimously adopted.
There being no further business before the meeting, the meeting therefore adjourned.

BART S. ADAMS,
President.

HENRY M. NEEDLES, *Secretary.*

We, the undersigned stockholders of the Belleville & St. Louis Railway Company, being present, hereby confirm the action of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.
Belleville, Ill., March 25, 1893.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
ALPHEUS BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

End Exhibit "C."

559 EXHIBIT "D."

At a meeting of the stockholders of the Belleville City Railway Company, held at the office of the company, in the city of Belleville, on the 25th day of March, A. D. 1893, the following proceedings were had: Present, Charles W. Thomas, owning 499.6—, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one share, Bartlett S. Adams, one share; Mr. Adams was made president and C. W. Thomas secretary. The following named persons were unanimously elected directors of the company: Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor and Bartlett S. Adams, and the meeting adjourned.

(Signed) BART S. ADAMS,
Prest. of Meeting.
CHARLES W. THOMAS,
Secretary.

At a meeting of the directors of the Belleville City Railway Company, held at its office in the city of Belleville, immediately after the

adjournment of the stockholders' meeting March 25, 1893, the following proceedings were had, all the directors being present:

Mr. Bartlett S. Adams was elected president of the company, and Charles W. Thomas, secretary. Mr. Taylor introduced the following resolution and moved its adoption: "Resolved, that a call of one hundred per cent. be made upon the capital stock of this company, payable on or before May 1, 1893, and that the secretary be directed to give written notice of this call to all the stockholders within twenty days." Mr. E. L. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of $499,500 certain property described and referred to in his deed to the company of this date, which was produced but which is not delivered. Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give this company credit on such purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of its stock of the services he may hereafter perform in floating this company's bonds, and also the indebtedness due him from the company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transfered upon the stock transfer book of the company, subject to calls made thereon to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made
560 at this meeting upon his 4,995 shares of the stock of this Company, upon the condition that he float the $500,000 of bonds of this Company, heretofore authorized to be issued, any of such bonds that he sells to net this Company such a price as may be hereafter agreed upon between him and the Board of Directors of this Company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the Company to be accounted for by him at par, to the end that the railway of this Company may be at once constructed and operated from some point within the original City of Belleville to the Mississippi River; and upon the further condition that Mr. Leathe protect this company from any decree foreclosing the mortgage to secure said bonds until one year after its said railway is in operation, and that Mr. Leathe be requested to sign the record of the proceedings of this Board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion, and it was unanimously adopted.

I accept the terms of the foregoing resolution.
(Signed) SAMUEL H. LEATHE.

And the Board adjourned to meet subject to the call of the President.

(Signed) BART S. ADAMS, *Pres.*
(Signed) CHARLES W. THOMAS, *Secretary.*

At a meeting of the Stockholders of the Belleville City Railway Company, held at its office in the City of Belleville on the 25th day of March, immediately after the Board adjourned the following proceedings were had. Present, all the stockholders. Mr. Samuel H. Leathe was made Chairman of the meeting, and Charles W. Thomas was made Secretary. Mr. Chipley offers the following by-law and moves its adoption.

XVII.

The Board of Directors of this Company shall hereafter consist of seven stockholders.

Mr. Adams seconded the motion, and the by-law was unanimously adopted.

H. M. Needles, E. L. Thomas, Bartlett S. Adams, John T. Taylor and Charles W. Thomas offered their resignation- as directors, and their resignations were accepted.

The stockholders then proceeded to the election of seven directors. Mr. Adams moved that two tellers be appointed by the President to take and count the ballots of the stockholders, and Mr. Adams
561 and Mr. Taylor were appointed tellers. Upon an inspection of the ballots the tellers reported that the following named persons had received the number of votes set opposite their respective names. Edward L. Thomas, 500- votes; Bartlett S. Adams, 5,000 votes; John T. Taylor, 5,000 votes; Lucien M. Chipley, 5,000 votes; Samuel H. Leathe, 5,000 votes; Samuel Leathe, 5,000 votes; James H. Waddock, 5,000 votes.

On motion Messrs. Thomas, Adams, Taylor, Chipley, Samuel H. Leathe, Samuel Leathe and Waddock were declared to be directors of the Company until the next annual meeting of the stockholders. And the meeting adjourned.

(Signed) CHARLES W. THOMAS, *Secretary.*
SAM'L H. LEATHE, *Chairman.*

We, the undersigned, being all the stockholders of said Company hereby ratify and confirm all the proceedings set forth in this record book.

(Signed) SAM'L H. LEATHE.
JOHN T. TAYLOR.
JAS. H. WADDOCK.
SAM'L LEATHE.
CHARLES W. THOMAS.
L. M. CHIPLEY.
H. M. NEEDLES.
EDWARD L. THOMAS.
BART S. ADAMS.

At a meeting of the Directors of the Belleville City Railway Company, held at its office in the City of Belleville, on the 25th day of March, A. D. 1893, after the adjournment of the foregoing stockholders' meeting, the following proceedings were had. All the di-

rectors were present. The following persons were unanimously elected to the several offices of the Company:

Samuel H. Leathe, President and Vice-President.
Lucien M. Chipley, Vice-President.
Charles W. Thomas, Secretary.
And the Board adjourned.

(Signed) CHARLES W. THOMAS, *Secretary.*
(Signed) SAM'L H. LEATHE, *Pres't.*
L. M. CHIPLEY, *Director.*
EDWARD L. THOMAS, *Director.*
BART S. ADAMS, *Director.*
JOHN T. TAYLOR, *Director.*
SAM'L LEATHE, *Director.*
JAS. H. WADDOCK, *Director.*

Filed Nov. 21, 1893.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ill.

562 STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, September Term, 1893.

SAMUEL H. LEATHE ET AL.
vs.
EDWARD L. THOMAS.

Bill for Injunction and Relief.

The defendant, Edward L. Thomas, for answer to said bill, says: That he has examined the Bill of the Complainants herein presented. That item one in said Bill is true; that item two in said Bill is true; that item three in said Bill is true; that item four is true; that item five in said Bill is true; that item six is untrue; that item seven is true; item marked 9, there being no item eight, is true in so far as it states that Edward L. Thomas had expended some money, but is untrue when it says that the complainant, Samuel H. Leathe, was not acquainted with the amount thereof, as will be shown hereafter; that item ten is true, except that the said Leathe knew by statement rendered to him the exact amount due the heirs of W. A. Adams; that item eleven is in the main true, but that while the affairs of said Thomas were desperate, said Thomas believed that had the said Leathe not gone into the enterprise, others would have become interested therein; that item twelve is true, except that the agents of the said Thomas did not approach the complainant Leathe, but that one Lucien M. Chipley, a broker, acted in that behalf, but that prior to January 24th said Chipley and Leathe were acting together, and were to enter into a joint contract as hereinafter set forth, did approach the complainant Leathe, and that the defendant Thomas did write the letter set forth in the Bill under the caption of item twelve; that the statements in said letter are true in every

respect; that under said letter and arrangement it was agreed that the said Thomas should control the building of the railway; that item thirteen is true in so far as it states the action taken by Edward L. Thomas and Bart S. Adams; that defendant says that on said 24th day of January, 1893, he and the said Bart S. Adams signed the said instrument set forth in said item thirteen in said Bill and that he signed himself the part following the said instrument; that it is not true that the said Samuel H. Leathe and the said Lucien M. Chipley signed said instrument on said day, or that they ever executed the same within the true intent and meaning of the said instrument.

563 Defendant further says that the said Bart S. Adams and defendant signed said instrument on said day, and that defendant, in the presence of the said Bart S. Adams and said Lucien M. Chipley, requested the said Samuel H. Leathe and the said Lucien M. Chipley to then and there sign and execute said instrument; that the said Samuel H. Leathe then and there refused to execute the same, and desired to take it and consider it further; that the said instrument then signed by the said Thomas and Adams was then delivered to the said Leathe, unsigned by said Leathe and Chipley; that afterwards the said Leathe, but not in conformity to the terms of said instrument, took up and paid outstanding notes and indebtedness of this defendant and of Bart S. Adams as follows:

Complainant Leathe paid to Mrs. Josephine Johnson such sum as he agreed upon for stock and bonds of the Belleville & St. Louis Railway Company then held by the said Josephine Johnson, and which was stated in the account of W. A. Adams as having been advanced by him; that the said Leathe paid, as defendant is informed by him, to the said Josephine Johnson, the sum of $1,500 for $1,000 of stock and $2,000 of bonds in the Belleville & St. Louis Railway Company, for which the said Leathe demanded and received of Bart S. Adams his note for that amount.

That said Leathe took up the note of $750 given by the said Thomas to Gould, and secured by bonds of the Belleville & St. Louis Railway Company, and being part of the $3,000 mentioned in said letter, and exacted from said Thomas a note signed by the said Thomas for the amount of said note held by said Gould, and entered into an agreement with the First National Bank of Belleville, by which he obtained possession of $90,000 of said bonds held by said bank as collateral.

Defendant further says that item fourteen is true, but that it does not state all of the facts, and that they are stated as hereinbefore; that the said Leathe paid the amount as stated to Mrs. Josephine Johnson and to the Third National Bank, which was the Gould note.

Defendant further says that item fifteen is wholly untrue; that said Leathe never asked defendant nor the officers, directors or anybody connected with the Belleville & St. Louis Railway Company, to transfer him any stock at any time; that it is not true that the said Bart S. Adams delivered to said Leathe one hundred shares of the capital stock of the Belleville & St. Louis Railway Company

as his, Leathe's, or that the said Edward L. Thomas ever attempted to deliver to said Leathe 875 shares of the said stock except as per the terms of said instrument of January 24th; that it is true that said 875 shares were deposited with the Third National Bank of St. Louis,
and that it is true that under the terms of the instrument of
564 January 24th, if the same had been executed by said Leathe and Chipley, the defendant, Thomas, would have delivered said shares to said Leathe under the guarantee attached to said instrument, but that after the refusal of said Leathe to execute said instrument, no further attempt was made to get said stock, nor did said Leathe further interest himself therein until as hereinafter stated; that it may be true that the said Leathe is now in possession of said shares, but that he is not the equitable owner thereof; that said shares were delivered by the affiant to one Henry T. Kent, as collateral to secure a note of $500 due by the said Belleville & St. Louis Railway Company to the said Henry T. Kent, being part of the $3,000 mentioned in a letter written by Edward L. Thomas to the said Samuel H. Leathe, and mentioned in said bill under paragraph twelve thereof; that the said Henry T. Kent delivered the said stock to the said Leathe on Saturday or Monday, the 25th or 27th day of November, 1893, upon the payment to the said Henry T. Kent by said Samuel H. Leathe of a part of the indebtedness of the said Belleville & St. Louis Railway Company to the said Henry T. Kent, for which said stock had been put in the hands of the said Henry T. Kent as collateral; and that the said Samuel H. Leathe in making said statement, falsely misstates the facts knowingly, and procured said stock in order to be in a position to make with seeming truth said false statements.

Defendant admits that the increase of stocks was made as stated in said paragraph fifteen, but denies that the said Samuel H. Leathe ever had in any manner any equitable or legal right to any stock in the Belleville & St. Louis Railway Company, and that all the rights that he had acquired have been acquired under the terms of the instrument signed by Adams and Thomas, dated January 24, 1893, which said instrument was never executed by the said Leathe and Chipley, and which said Leathe declined and refused to execute; and which has been wholly annulled, abrogated and set aside.

Defendant further says that the item sixteen in said bill is untrue in so far as it states that the said Leathe has energetically proceeded since the making of said contract to carry out the provisions thereof, and denies that he has expended in the purchase of terminals and rights of way and in the construction of said railway more that $100,000, and states the facts to be that during the summer of 1893, it was possible and within the line of the proper carrying out of the contract entered into by the said Leathe with the Belleville City Railway Company, on the 25th of March, 1893, to have constructed said railway out of the coal lands in said letter in said bill set forth, and to have sunk a shaft or shafts, and having
been mining and transporting coal, according to said letter
565 and said supposed contract of January 24th, long before this time.

And defendant says that the said Leathe has delayed in every manner the proper construction of said road, and has refused to go on therewith according to the best methods of railway construction.

Defendant further says that item 17 is not true, that said instrument of January 24th was never executed by the said Leathe and Chipley; that it was never determined by the parties to said instrument that the charter of the Belleville City Railway should be acquired without objection, but that defendant objected to the acquirement of said charter and insisted that the said Leathe and Chipley should sign and execute the instrument of January 24th; that the said Leathe refused to execute said instrument and insisted that the said Edward L. Thomas should procure the charter of the Belleville City Railway Company; that the said Thomas objected persistently to the procurement of said charter and upon the statement made by the said Leathe and Chipley to him that they would not enter into the proposed contract of January 24th, and would not go on with the enterprise unless he procured the said charter.

Defendant thereupon arranged with Charles W. Thomas, who then had control of said charter for its purchase.

Defendant was compelled to surrender to Charles W. Thomas $25,000 of the stock that he was to have under the terms of the instrument dated January 24th, that that surrender also included a proportionate surrender of the stock of other companies that were to be formed under the terms of the instrument of January 24th, 1893; that it had been determined that the proportion in amounts of stock in all of the companies that were to be formed was to be maintained as per stock held in the Railway Company.

That it is true that the nominal stock of the Belleville City Railway Company was $50,000 and was increased, as stated in item 17, to $500,000; that said increase was made upon full consultation and discussion by the said Leathe, Thomas, defendant, Adams and those connected with the enterprise.

That the 18th paragraph in so far as it states the facts of conveyances is true, but that the reasons therefor are as hereinafter stated.

That paragraph 19 is true as therein stated that Charles W. Thomas transferred to the said Leathe 4,995 shares of the capital of the Belleville City Railway Company, but it is not true that any action was taken by the said Leathe, Thomas, Adams and Chipley under the terms of the instrument signed by said Thomas and Adams on Jany. 24, 1893, but that every action taken on the 25th day of March was taken under the contract then entered into, and
566 that prior to that time, to wit: about the middle of March, 1893, and after the purchase of the franchise of the Belleville City Railway Company by Defendant from Charles W. Thomas, a meeting was held by the said Charles W. Thomas, Samuel H. Leathe, Lucien M. Chipley and Edward L. Thomas, at the office of the said Chipley in St. Louis, and at said meeting Charles W. Thomas then stated that he had no connection with the Belleville & St. Louis Railway Company, and that any proposed contract or proposition

that had been heretofore entered into would not be applicable to the State of affairs then existing, and that such contract would have to be abrogated and that the said Leathe then and there assented to the proposition of the said Charles W. Thomas and admitted that the said proposed contract was not signed by him and that it would be abrogated and that a new contract must be entered into. Thereupon a new contract was discussed and the terms thereof from time to time spoken of until the 25th day of March, 1893, when the new contract was entered into.

Defendant further says that it is true that he agreed to pay for said charter out of his stock, but that said payment was made with objections, and never would have been made if said Leathe and Chipley had executed the proposed contract of January 24th, and by reason of the statement made by the said Leathe, that he would not execute such proposed contract and would not go into the enterprise unless the charter of the Belleville City Railway was procured, defendant was compelled to procure said charter, and that if the said Leathe and Chipley had have executed the proposed contract of January 24th, and so informed defendant, defendant never would have purchased the charter of the Belleville City Railway Company; that said purchase was made by defendant at a sacrifice of the interest of defendant in the enterprise of over ten thousand dollars.

Defendant says the statement of facts made in item 20, so far as it relates to the actions taken on the 25th day of March, 1893, are true, except that they were not mere formal actions, but that they were made after a full discussion and made to replace the proposed contract of January 24th, and made after it was agreed and understood by all the parties that the proposed contract of January 24th had not been executed and that it was not to be executed, but that an entirely new contract was to be entered into, which was done on the 25th day of March, 1893, and that it is not true that the said action had any reference to the proposed contract of January 24, 1893; that the said proposed contract of January 24, 1893, has never been executed by the said Leathe and Chipley as they informed defendant, and that by agreement it was abrogated, annulled and set aside; that an entirely new contract was to be entered into,
567 which was discussed and finally determined upon on the 25th day of March, 1893, and that it is not true that the said Leathe has proceeded with all possible energy under said contract. That as to item 21 in said bill defendant says that the said Leathe refused and declined to issue the bonds of the Belleville City Railway Company, on the first day of May, as provided for and as agreed upon, that he declined to make the Mercantile Trust Company, of New York, the trustee, as agreed upon, and finally determined to make the St. Louis Trust Company trustee; he finally determined that said bonds should be dated the first day of July, 1893; that defendant believes that had said bonds been issued as per the agreement and contract on the 1st day of May, 1893, they could have been floated, but that the time when said Leathe could float the bonds was a matter of no importance to the Belleville City Railway or to defendant, because the said Leathe had agreed to furnish funds to

construct said Railway at once, without regard to the time of floating of said bonds, and because the said Leathe had agreed upon the conveyance to him of the property of the Belleville and St. Louis Railway Company to pay the indebtedness of the said Railway Company, a part of which is the indebtedness now sued on by defendant and which the said Leathe now seeks to enjoin by this bill, and that no time was fixed in which the said Leathe should pay the indebtedness of the Belleville and St. Louis Railway Company.

Defendant further says in regard to item 22 that it is true, except in so far as it refers to the proposed contract of January 24, 1893, alleging that the said proposed contract of January 24th was never entered into as hereinbefore set forth, and that the agreement to increase the stock of the Crown Coal Company to $200,000 was made in the discussion of the contracts that were to be entered into after the purchase of the charter of the Belleville City Railway Company.

That item 23 defendant says is true, excepting as to the statement that said Leathe had expended $100,000; it is true that on the 25th day of March, 1893, the stock of the said Crown Coal Company was increased to $200,000 and that the name was changed as in said item 23 stated; that the objects thereof were changed as in item 23 as stated.

That item 24 is true in so far as it states that the said Leathe transferred his property and assigned his stock in the Crown Coal Company in the same proportion as the subscribers held the stock of the Belleville City Railway Company, but not in accordance with the proposed contract of January 24, 1893, but in accordance with the new contract entered into by said Leathe as hereinbefore stated; and

Defendant den hat the proposed contract of January 24,
568 1893, formed still forms the basis of the rights of the parties interested in said companies as between themselves, but states the fact to be that the said proposed contract of January 24, 1893, was never executed by the said Leathe up to March 25, 1893, and that the contract of March 25, 1893, was a new contract by express arrangement, abrogating and annulling the proposed contract of January 24, 1893; that the defendant denies that said Thomas, Taylor and Adams owe the said Leathe $4,500 furnished to them, as stated in item 24, but asserts the fact to be that the said Thomas, Adams and Taylor, with Meysenburg were the owners of the property of the Crown Coal Company, and had on hand at the time of these transactions over $9,000, over and above its indebtedness, which sum was left by them in the hands of the new company, but that enough of said sum was to be taken out to pay the then existing debts of the Crown Coal Company, and to purchase the stock of the said Meysenburg in said coal company, and that the said $4,500 spoken of by the said Leathe in said item 24, was secured or paid by Taylor and Adams then in the Crown Coal Company of which the said Leathe had control.

Defendant further says that the said Crown Coal Company, had during the last year or two, prior to the arrangement herein spoken of, made a large sum of money and had then due it a sum in excess of $9,000, and out of this sum it was agreed that the said stock of

the said Meysenburg should be purchased. Defendant denies that any sum was borrowed from complainant for the purchase of said stock, and alleges that said Leathe has failed in every particular to carry out his contract in that regard.

Defendant further says that the said Leathe in item 25 of the said bill, falsely alleges that he is the owner or equitable owner of stock of the Belleville & St. Louis Railway Company; that said complainant is not the equitable owner or legal owner of any share of stock in the said company; that the stock acquired by him from Josephine Johnson was acquired under the terms of the proposed contract of January 24th; that he exacted a note for the same as he informed defendant, and as Bart S. Adams informed defendant, from the said Bart S. Adams for the amount paid Josephine Johnson for said stock; that all of the stock he had taken up, was prior to the time of the entering of the new contract of March 25, 1893, excepting 875 shares which he has lately obtained from Henry T. Kent, as hereinbefore set forth and of which he is not the legal or equitable holder, except as collateral for a debt of the Belleville & St. Louis Railway Company which he agreed to pay on the 25th day of March, 1893. That it is not true that the defendant ever caused a fraudulent meeting of the Board of Directors of the Belleville & St. Louis Railway Company to be held, but that on the 21st day of August,
569 1893, a meeting of the Board of Directors of said Company was held at which the promissory note mentioned in said item 25 was executed; but that said note was not fraudulently executed but executed in good faith, with an intention to fix the amount of the indebtedness of said company to the said Edward L. Thomas. That the amount in said note was given by the said Edward L. Thomas to the said company in a statement then made, which said statement was substantially made to the said Leathe before the entering into the contract of March 25th, and before the signing by Bart S. Adams and Edward L. Thomas of the intended contract of January 24, which said statement was made a part of the said proposed contract, and is not exhibited by said complainant nor set out on this bill, but which defendant makes a portion of this answer and files a copy hereof, marked Exhibit "I" to this answer. Defendant further says:

As to item 26, that the Directors of said Belleville & St. Louis Railway Company did not act without power or shadow of authority; that it is not true that neither of them had no substantial interests in the corporation for which they acted, but that on the contrary the said Thomas and Adams and Boling and Taylor were substantially interested in said corporation; Defendant denies that the action taken by the said Board of Directors when said note was issued was fraudulent, and says that it is not true that the said Belleville & St. Louis Railway Company was not indebted to Edward L. Thomas for the amount of said note.

Defendant further says that the statement in item 26 that to whatever amount said Thomas may have had a just claim against the Belleville & St. Louis Railway Company for money expended and labor on account of constructing said Railway he has no claim which is now due and enforceable against said Railroad is not true, but

that the amount expended by said Thomas is now due and payable to him by the terms of the contract entered into by the said Complainant Leathe, upon the sale and deeding to him of the property of the Belleville & St. Louis Railway Company, and that all other allegations in said item or in said Bill contrary to the statements herein are untrue. That defendant further says that it is not true, that the said Samuel H. Leathe, in furtherance of said enterprise and for his own protection and that of his associates, including said Edward L. Thomas, proposes as soon as the condition of the market allows, to use all energetic means to realize on said Bonds because he says that the said Samuel H. Leathe, contrary to the contract entered into by him, has refused and continued to refuse, until the 9th day of August, 1893, to call a meeting to issue the said bonds and after said meeting was called he declined to attend the same, and never did issue the said bonds nor execute the Mortgage to se-
570 cure the same until about the first of October, 1893, more than six months after entering into the contract of March 25, 1893, and that all protestations made by the said Leathe that he intended or desired to build the said Railway in good faith under the said contract of March 25, 1893, are untrue.

Defendant further says that item 27 is true.

That under item 28 it is true that he has commenced suit in the name of the Belleville and St. Louis Railway Company against the Belleville City Railway Company, but it is not true that the said Thomas and said pretended directors well knew that the said transfer stated in said twenty-eighth item, was a mere formal act, but states that the said transfer was made under the agreement stated on the 25th day of March, 1893, and that the said suit was brought in good faith to preserve the lien of the Belleville and St. Louis Railway Company for the property sold to the said Leathe, and by him transferred to the Belleville City Railway Company, in payment of his stock; that no claim has ever been made by the Belleville and St. Louis Railway Company, that the Belleville City Railway Company is indebted to it, except such as would be required in a bill for vendor's lien as herebefore set out.

Defendant further says that in regard to item 29, that it is not true that the suits by the said Edward L. Thomas and the one now sought to be enjoined, tend or tends to delay and hamper the enterprise upon which the said Leathe has entered with the said Thomas and others, and that may create confusion in the affairs of the Belleville City Railway Company and the Crown Coal Company, and that may affect the salability of the Belleville City Railway Company's bonds, but affiant says that the whole of said suits are due to the refusal of the said Leathe to comply with his plain and well understood contract, and that the claim of the said Leathe in this bill, that the proposed contract of January 24, 1893, is in force, is false, and through such false claim and by reason of his refusal to comply with the terms of his contract, the entire trouble that the said Leathe complains of has arisen, and

Defendant alleges that said Leathe fraudulently procured the signature of Chipley to said proposed contract of January 24th, and fraudulently signed the same himself on or about the 27th day of

July, A. D. 1893, after said Leathe had refused to issue the bonds under the contract of March 25th, and with the fraudulent intention of claiming it to be in full force and effect, he well knowing that he had not executed said proposed contract, and had refused so to do when requested by this defendant, and that he now fraudulently sets up said contract in order to escape his liability under the contract of March 25, 1893.

571 Defendant further says that prior to the execution by him of the proposed contract dated January 24th, said Leathe informed defendant that he had on hand $225,000 which he expected, if he went into this enterprise, to use in it; that it was never expected, nor was it thought, that the bonds of the said railway could be floated or put upon the market until said road should be completed as far as the bluffs at least, and should be engaged in the hauling of coal from the mines at the bluffs. That these matters were frequently spoken of, and that said Leathe always claimed that he would be compelled to put up enough money to so complete the road, before he could hope to realize from the bonds, and that it is not true that the bad financial condition of affairs at the present time, has had anything to do with the failure of the said Leathe to construct said road if said Leathe's former statements make to defendant were true.

Defendant, further answering, says that said Leathe had persistently refused to carry out any of the contracts made by him. That instead of paying for the coal, as mentioned in said letter referred to in the instrument of January 24, 1893, he insisted on a sale to him of the coal and surface, and declined to execute the contract of March 25, 1893, until the same was so conveyed for the sum of $24,000, which was to be paid to the grantees, the defendant and his wife, in bonds of the Belleville City Railway Company; that he persistently refused to issue said bonds of the Belleville City Railway Company, and refused to give the same to said grantees, and refused to reconvey said property or pay in any way for the same, after conveying the same to the Crown Coal Company.

This defendant says that the amount due this defendant was well known to said Leathe, except as to a portion of the grading which at the time of rendition of the account to said Leathe by defendant had not been cal-ulated by the engineer, but had been estimated.

In every other respect the items were to be paid by said Leathe, and in assuming the debts of the Belleville and St. Louis Railway Company under the contract of March 25th the statement made was referred to as fixing the amount of that indebtedness, all of which was well known to said Leathe, it being also understood and agreed that the same was to bear interest, as provided by the resolutions of the directors of said railway company long before that time, in the hands of said Leathe, and examined by him.

The defendant, having fully answered, prays to be hence dischargd, with his costs, etc.

EDWARD L. THOMAS,
Pro. Se.

Filed Nov. 28, 1893.

THOMAS MAY, JR.,
Circuit Clk., St. Clair Co., Ill.

572 Account Chipley and Leathe.

Delivered January 12, 1893.

Organization.

1899	License	$2 00
	Certificate	3 00
	Notices	1 00
	Publication	7 50
	Recording	12 25
	Publication	7 50
	Meeting	3 00
	Recording	16 00
	Certified copy	2 00
	Printing	39 00
	Recording	9 60
	Certified copy	2 00
	Seal	6 00
1890	Engraving bonds	745 00
	Trustee's fee	500 00
	Executing bonds	8 00
	Book	2 00
	Stamp	1 00
	Stock book	3 00
1891	Publication	7 50
	Notices	1 00
	Recording	16 00
	Executing	5 00
	Meeti..	8 00
	Printing	56 00
	Binding	7 00
	Stamps	12 50
	Stationery	54 00
	Printing circulars	6 00
	Distributing	2 50
1892	Printing ordinances	45 00
	Engraving	625 00
	Publication	7 50
	Notices	1 00
	Meeting	8 00
	Printing	56 00
		$2,287 85

Paid by Captain Adams		$4 00
Paid by Edward L. Thomas		2,283 85
	$2,287 85	$2,287 85

573 Sundries.

1889	Expense to St. Louis	172 00	
	Assistance	250 00	
	Livery	152 00	
1890	Expenses to St. Louis and East St. Louis	262 00	
	Expenses to Chicago	75 00	
	Expenses to Springfield	47 00	
	Expenses to New York, Needles and self	306 00	
	Horse, buggy and harness	245 00	
	Board of horse	84 00	
	Livery	36 25	
1891	Securing ordinance	135 60	
	Chicago, Needles and self	74 00	
	Churchill contract	1,500 00	
	Sullivan and Townsend	1,000 00	
	Options on coal	250 00	
	Rights of way	150 00	
	Knispel C. P. fees	250 00	
	Expenses to St. Louis and East St. Louis	190 00	
	Expenses to Chicago	39 00	
	Board of horse	165 00	
	Livery	21 50	
	Ferry	1 00	
1892	Expenses to St. Louis	250 00	
	Expenses to East St. Louis	100 00	
	Stenographers	122 00	
	Petition	200 00	
	Ordinances of Belleville	450 00	
	Repairs of buggy	12 60	
	Board of horse	121 00	
	Livery	119 35	
	Repairs	6 00	
	Expenses to Chicago	22 00	
	Plats	9 00	
		$6,836 70	
	Paid by Capt. W. A. Adams		$1 00
	Paid by Edward L. Thomas		6,835 70
		$6,836 70	$6,836 70

574 Right of Way.

1890	St. Louis, Alton & Terre Haute R. R. Co.	$3,100 00
	James Dunn	500 00
	Walter and Mary Gowans	200 00
	Joseph Touchette	350 00

	Joseph Boswick & wife	1,000 00	
	Oliver Brouillette	1,000 00	
	Wilhelmina Roemig	300 00	
	Andrew Touchette	20 00	
	Thomas Burke for Donnelly heirs.	200 00	
	Alexander Touchette	20 00	
1891	E. & L. McDonald	360 00	
	August Schmidt	500 00	
	Mrs. A. Ehrstein	50 00	
	Wm. Lepere	20 00	
1892.	Wm. Atchison	425 00	
	George Merod	35 00	
	George Sherod	70 00	
	Total	$8,150 00	
	Paid by Capt. W. A. Adams		$6,920 00
	Paid by Edward L. Thomas		1,230 00
		$8,150 00	$8,150 00

Contracts Graded.

1891	Alexander Forst	700 00	
	Mary O. Thomas	2,000 00	
	Jos. Ehrstein	500 00	
	Adam Emge	600 00	
	Ann Phillips	1,000 00	
	Peter Schwinn	500 00	
	Jacob Voellinger	1,000 00	
	Mrs. Peter Voellinger	900 00	
	M. T. Stookey	2,000 00	
	Fred Tilling	1,250 00	
	J. Linn	50 00	
	Consolidated Coal Co	100 00	
		$18,750 00	
	Paid by Adams & Thomas	8,150 00	
	To be paid by Thomas	$10,600 00	

This must be credited to Thomas, in the account, or paid by company. *See letter.*

575 Coal.

1890	160 acres, at $60.00	$9,600 00	
	Interest on deferred payments to Jan. 1st, 1893	972 00	
	Stock Book	3 00	
	Stamp	25	
	Seal	6 00	
	Blank Book	60	
	License	2 00	
	Trial Shaft		

1891	Supplies	58 45	
	Lumber	8 40	
	Fan	8 00	
	Material	13 00	
	Hire of Mule	21 00	
	Hire of horse and driver	25 00	
	Hauling	13 50	
	Labor	277 95	
		$11,009 15	
	Paid by Capt. W. A. Adams		2,409 85
	Paid by Thomas		8,599 30
		$11,009 15	$11,009 15

The deferred payment of $7,200 was secured by mortgage and notes of Edward L. Thomas, which, with interest for 2 yrs. 3 mo. at 6% amounts to $8,172 which must be paid by the company, and as Thomas has given notes, this is credited to him, and goes into his account.

Land.

1890	Land of Donnelly heirs	$1,696 10	
	Land of McCracken	3,220 00	
		$4,916 10	
	By land sold to J. Slemmins	2,000 00	
	By land sold to A. Pheiffer	3,400 00	
		$5,400 00	
	To land of W. Roemig	1,500 00	
	To land of Oliver Brouillette	3,060 00	
	To land of Eagle Machine Co.	1,000 00	
		$5,560 00	
576	Paid by Capt. W. A. Adams		$4,916 10
	Paid by profit on sale		483 90
	Paid by Edward L. Thomas		160 00
		$5,560 00	$5,560 00
	Due Capt. W. A. Adams		$4,916 10
	" Edward L. Thomas		160 00
			$5,076 10

The title of these three tracts purchased by me from proceeds of land sold and formerly purchased by Capt. Adams is in Edward L. Thomas, and will be transferred to the company when demanded free of all incumbrances.

Construction.

1890	Grubbing	54 20	
	Hauling	1 75	
1891	Grubbing	261 50	
	Cutting piles	63 00	
	Hewing	119 20	
	Timber	63 00	
	Hauling	97 00	
	Hire of wagon	4 00	
	Lumber	90	
	Bridges	38 00	
	Material for	15 50	
	One car of culvert pipe	118 00	
	Two cars of culvert pipe	241 35	
	Lime, sand and cement	14 85	
	Brick	24 00	
	Laying culverts	113 25	
1892	1 car of culvert pipe	102 60	
	Hauling	24 00	
	Laying culverts	84 00	
	Grubbing	127 00	
1890	Grading 118,760 yds. at 13c.	15,438 80	
1891 & 1892	Grading 160,000 yds. at 18c. (estimated)	28,800 00	
1899	Engineer Grauer	178 20	
1890	Engineer Grauer	398 54	
	Engineer Reiss	383 21	
1891	Engineer Reiss	386 16	
1892	Engineer Reiss	1,718 81	
		$48,873 82	
	Paid by Capt. W. A. Adams		$9,423 77
	Paid by E. L. Thomas		39,450 00
		$48,873 82	$48,873 82

577 Grading is here charged as having been paid by E. L. Thomas the amount due him, and as he has contracted with Mr. Boling he must account to him. Expenses of grading have all been borne by Thomas, and company owes nothing outside but $300 which cannot be collected under contract until road is completed or bonds sold.

Recapitulation.

Organization	$2,267 85
Sundries	6,836 70
Right of way	18,750 00
Construction	48,873 82

Coal	11,009 15	
Land	5,076 10	
	$92,833 62	
Paid by Capt. W. A. Adams		$23,674 72
Paid by Edward L. Thomas		50,386 90
Amount for which Thomas is responsible		18,772 00
	$92,833 62	$92,833 62

Changes Made on Settlement with Railway Company August 21, 1893.

Organization	none	
Sundries, Knispel fee $250. Livery in 1893, prior to March 25, $28. Board of horse, $30; Expenses to St. Louis and East St. Louis, $72	$380 00	
Right of way		
Acct. of August Schmidt add $45	45 00	
Land		
Add $300 to Oliver Brouillette	300 00	
Coal	none	
Total added	$725 00	$725 00
578 Construction taken from estimated Grading, grading 145,876 yds. 138,876 at 18c. 24,997 68; 700 " 11c. 770 00, less $200 added for engineer 28,800 — 25,767.68 — 3,032.32, from which deduct $200 added liens	$25,767 68	$2,832 32
Total less		$2,107 32

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, 1893.

SAMUEL H. LEATHE ET AL.
vs.
EDWARD L. THOMAS.

Now comes the complainant, and for replication to the answer filed by defendant, says the said answer is untrue, and the said bill filed by them is true in all respects, and its truth they will maintain on the hearing or as the court will direct, etc.

G. A. KOERNER,
Sol. for Complainant.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

SAMUEL H. LEATHE, BELLEVILLE CITY RAILWAY COMPANY, BELLEVILLE & ST. LOUIS RAILWAY COMPANY

vs.

EDWARD L. THOMAS.

Bill for Injunction.

I, A. S. Wilderman, one of the judges of said court, and the judge by and before whom said cause was heard, do hereby certify that the following is all the evidence taken and heard in said cause:

Counsel for complainant gave in evidence a letter dated January 12, 1893, written by Mr. Edward L. Thomas to Samuel H. Leathe, also a statement of account which accompanied the letter.

579 "BELLEVILLE, ILL., *January 12th*, 1893.

Samuel H. Leathe, Esq.

DEAR SIR: Herewith is presented an itemized account of money expended in the matter of the Belleville & St. Louis Railway Company by Capt. W. A. Adams and Edward L. Thomas.

The amount in account with organization is some $1,200 less than account first rendered, because of the leaving off of fee of trustee for new bonds amounting to $500, and engraving new bonds of $475, and adding some small new items accruing in this month.

The amount of sundries is increased by some $500, by items new for this month, and fee of Mr. C. P. Knispel, overlooked and really agreed upon since making statement.

The amount of right of way is decreased by amounts charged for right through lands purchased by me, and which I supposed would be retained by me, but upon conversation with you I have put into the account and deducted the amount charged for right of way.

The amount of construction account is the same as rendered. The amount of coal lands is increased by interest for one month, bringing it up to Jan. 1st, 1893.

The land account is added, and, if thought best, the land will be transferred to the company. There are incumbrances on the land amounting to $3,500, which must of course be paid by me, if land is taken by the company.

The land is suited to our purposes, and I am willing to deed it or retain it, charging me with what company owes for it. I have of course put in sums not yet liquidated by me, but which can either be assumed by the company or paid by me as per account, and which I will then pay. This is particularly so in right-of-way account.

The late grading is estimated, but on consultation with the engineer we concluded it was about right. Of course this is to be calculated, and charged according to calculation. It will, however, not exceed amount stated, and will likely run several thousand yards below the estimated quantity.

The right-of-way contracts are binding upon me, but it makes no difference as to how they are charged or when paid, the right

will be granted, and no loss can result to the company, either by crediting to me, or assuming payment itself.

In this connection let me add, that several of the contracts were so drawn that no right of way was to be paid if coal was purchased, and I believe that nearly all can be done away with if coal is taken and one-fourth cash paid for it.

The coal account is, as mentioned, in the same condition—mortgage and notes given by me and still to be paid.

580 There are no outstanding debts of the company but $3,000, advanced me by parties with whom I had a contract. Four notes were given, and the understanding is that they are not to be paid until the enterprise is on its feet or bonds sold. One note of $750, as I mention, has two bonds up as collateral, and to get those bonds I will have to be paid.

Everything I could raise has been put into this enterprise and many shifts made in order to continue along so as to complete the grading. I have deserted my business since January, 1890, and while I do not ask for any compensation for the services performed, I am satisfied the enterprise has been carried on and brought to its present stage for less money than any other enterprise of a like nature. In the right of way above we have saved over one-half, and while our grading costs considerable, when it is considered that it is nearly of a width for two tracks in all the heavy work, it will be found to be reasonable.

I do not desire to make one cent out of this enterprise except by its operation, and feel confident that the amount that I shall receive will not more than pay obligations incurred in this work.

I have not added the $16,000 for my coal, but am ready to comply with my contract as regards that matter at any time if it is thought best, when final consultation is had.

I am willing to abide by this statement, and will make any necessary instruments to carry it out, leaving in your hands funds that would come to me until all matters are paid and satisfied so that the Company would be kept whole.

The proposition which I now make will leave you individually $255,000 of the R to stock myself and Bart S. Adams $166,700, and Mr. Chipley the balance, or $78,300. This proposition to be sustained in any other company formed or purchased.

Out of amount to Bart S. Adams and myself, we have some to surrender to others. Of course you would want to be treasurer and would perhaps like to have Mr. Chipley president. This can be arranged to your satisfaction; and three directors—yourself, Mr. Chipley and Bart from St. Louis; and four, Mr. Taylor, Mr. Needles, our present secretary, myself and Mr. Boling from Illinois, as the law requires a majority to live in that state. I feel confident that we can make a success of this enterprise, and hope that you will conclude to take hold of it and complete it. Having everything I have in it, I feel that I am unable to carry it much further, and have largely incurred the liabilities I have, because of my desire to prevent loss to the heirs of Capt. Adams, to whom I was under great obligations for kindness done and favors shown me.

Respectfully, etc.

(Signed) EDWARD L. THOMAS.

581 Accounts Chipley and Leathe.

Delivered January 12, 1893.

Organization.

1889	License	2.00	
	Certificate	3.00	
	Notices	1.00	
	Publication	7.50	
	Recording	12.25	
	Publication	7.50	
	Meeting	3.00	
	Recording	16.00	
	Certified copy	2.00	
	Printing	39.00	
	Recording	9.60	
	Certified copy	2.00	
	Seal	6.00	
1890	Engraving Bonds	745.00	
	Trustee's fee	500.00	
	Executing bonds	8.00	
	Book	2.00	
	Stamp	1.00	
	Stock book	3.00	
1891	Publication	7.50	
	Notices	1.00	
	Recording	16.00	
	Executing	5.00	
	Meeting	8.00	
	Printing	56.00	
	Binding	7.00	
	Stamps	12.50	
	Stationery	54.00	
	Printing Circulars	6.00	
	Distributing	2.50	
1892	Printing ordinances	45.00	
	Engraving	625.00	
	Publication	7.50	
	Notices	1.00	
	Meeting	8.00	
	Printing	56.00	
		$2287.85	
	Paid by Captain Adams		4.00
	" " Edward L. Thomas		2283.85
		$2287.85	$2287.85

582 Sundries.

1889	Expense to St. Louis	172.00	
	Assistance	250.00	
	Livery	152.00	
1890	Expenses to St. Louis and East St. Louis	262.00	
	Expenses to Chicago	75.00	
	Expenses to Springfield	47.00	
	Expenses to New York, Needles and self	306.00	
	Horse, buggy and harness	245.00	
	Board of horse	84.00	
	Livery	36.25	
1891	Securing ordinance	135.00	
	Chicago, Needles and self	74.00	
	Churchill contract	1500.00	
	Sullivan & Townsend	1000.00	
	Options on coal	250.00	
	Rights of way	150.00	
	Knispel C. P. fee	250.00	
	Expenses to St. Louis and East St. Louis	190.00	
	Expenses to Chicago	39.00	
	Board of horse	165.00	
	Livery	21.50	
	Ferry	1.00	
1892	Expenses to St. Louis	250.00	
	Expenses to East St. Louis	100.00	
	Stenographers	122.00	
	Petition	200.00	
	Ordinances of Belleville	450.00	
	Repairs of buggy	12.60	
	Board of horse	121.00	
	Livery	119.35	
	Repairs	6.00	
	Expenses to Chicago	22.00	
	Plats	9.00	
		$6836.70	
	Paid by Capt. W. A. Adams		1.00
	Paid by Edward L. Thomas		6835.70
		$6836.70	$6836.70

583 Right of Way.

1890	St. Louis Alton & Terre Haute R. R. Co	$3100.00
	James Dunn	500.00
	Walter & Mary Gowans	200.00
	Joseph Touchette	350.00
	Joseph Beswick & wife	1000.00
	Oliver Brouilette	1000.00
	Wilhemina Roemig	300.00
	Andrew Touchette	20.00
	Thomas Burke for Donnelly heirs	200.00
	Alexander Touchette	20.00
1891	E. L. McDonald	360.00
	August Schmidt	500.00
	Mrs. A. Ehrstein	50.00
	Wm. Lepere	20.00
1892	Wm. Atchison	425.00
	George Merod	35.00
	George Sherod	70.00
		$8150.00

Paid by Capt W. A. Adams	$6,920.00	
Paid by Edward L. Thomas	1,230.00	
	$8,150.00	$8,150.00

Contracts Graded.

1891	Alexander Forst	700.00
	Mary O. Thomas	2000.00
	Joseph Ehrstein	500.00
	Adam Emge	600.00
	Ann Phillips	1000.00
	Peter Schwinn	500.00
	Jacob Voelinger	1000.00
	Mrs. Peter Voelinger	900.00
	M. T. Stookey	2000.00
	Fred Tilling	1250.00
584	J. Linn	50.00
	Consolidated Coal Co.	100.00
		$18750.00
	Paid by Adams & Thomas	8150.00
	To be paid by Thomas	$10600.00

This must be credited to Thomas in the account or paid by Company. (*See letter.*)

Coal.

1890	160 acres at $60.00	$9600.00	
	Int. on deferred payments to Jan. 1st, 1893	972.00	
	Stock book	3.00	
	Stamp	.25	
	Seal	6.00	
	Blank Book	.60	
	License	2.00	
	Trial shaft		
1891	Supplies	58.45	
	Lumber	8.40	
	Fan	8.00	
	Material	13.00	
	Hire of mule	21.00	
	Hire of horse and driver	25.00	
	Hauling	13.50	
	Labor	277.95	
		$11009.15	
	Paid by Capt. W. A. Adams		$2409.85
	" " Thomas		8599.30
		$11009.15	$11009.15

The deferred payment of $7,200 was secured by mortgage and notes of Edward L. Thomas, which, with interest for 2 yrs. 3 mo. at 6%, amounts to $8,172.00, which must be paid by the Company, and as Thomas has given notes, this is credited to him, and goes into his account.

585 Land.

1890	Land of Donnelly heirs	$1696.10	
	Land of McKracken	3220.00	
		$4916.10	
	By land sold to J. Slemmins	2000.00	
	" " " " A. Pheiffer	3400.00	
		$5400.00	
	To land of W. Roemig	1500.00	
	" " " Oliver Bouilette	3060.00	
		1000.00	
		$5560.00	
	Paid by Capt. W. A. Adams		$4916.10
	" " profit on sale		483.90
	" " Edward L. Thomas		160.00
		$5560.00	$5560.00
	Due Capt. W. A. Adams		$4916.10
	" Edward L. Thomas		160.00
			$5076.10

The title of these three tracts purchased by me from proceeds of land sold and formerly purchased by Capt. W. A. Adams is in Edward L. Thomas, and will be transferred to the Company when demanded, free of all incumbrances.

Construction.

1890	Grubbing	54.20	
	Hauling	1.75	
1891	Grubbing	261.50	
	Cutting piles	63.00	
	Hewing	119.20	
	Timber	63.00	
	Hauling	97.00	
	Hire of wagon	4.00	
	Lumber	.90	
	Bridges	38.00	
	Material for	15.50	
	One car of culvert pipe	118.00	
	Two cars of culvert pipe	241.35	
	Lime, sand and cement	14.85	
	Brick	24.00	
	Laying culverts	113.25	
586			
1892	1 car of culvert pipe	102.60	
	Hauling	24.00	
	Laying culverts	84.00	
1890	Grubbing	127.00	
1891	Grading 118,760 yds. at 13c	15438.80	
1892	Grading 160,000 yds. at 18c (estimated)	28800.00	
1889	Engineer Grauer	178.29	
1890	" Grauer	398.54	
	" Reis	383.21	
1891	" Reis	386.16	
1891	" Reis	1,718.81	
		$48873.82	
	Paid by Capt. W. A. Adams		$9423.77
	" " E. L. Thomas		39450.05
		$48873.82	$48873.82

Grading is here charged as having been paid by L. Thomas, the amount due him, as he has contracted with Mr. Boling, he must account to him. Expenses of grading have all been borne by Thomas. And the Company owes nothing outside but $3,000, which cannot be collected under contract until road is completed or bonds sold.

Recapitulation.

Organization	$2287.85	
Sundries	6836.70	
Right of way	18750.00	
Construction	48873.82	
Coal	11009.15	
Land	5076.10	
	$92833.62	
Paid by Capt. W. A. Adams		$23674.72
" " Edward L. Thomas		50386.90
Amount for which Thomas is responsible		18772.00
	$92833.62	$92833.62

587 *Changes Made on Settlement with Railway Company, August 21, 1893.*

Organization		none
Sundries:		
Knispel fee	$250	
Livery in 1893 prior to March 25	28	
Board of horse	30	
Expenses to St. Louis & East St. Louis	72	
		$380 00
Right of way		
Account of August Schmidt, add $45		45 00
Land		
Add $300 Oliver Bouilette		300 00
Coal		none
		$725 00

Construction taken from estimated Grading, Grading 145,876 yds.

138,876 at 18c	24,997.68	
7,000 at 11c	770.00	
	25,767.68	
Less $200 added for engineer, 28,800 — 25,767.68 — 3,032.32 from which deduct $200 added liens		2,832 32
Total less		$2,107 32

Counsel for complainant then gave in evidence the contract dated January 24, 1893, as follows:

Contract is as follows:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe, $255,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 5 per cent. bonds of said company. The present bonds $150,000 to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000 with interest, and Third National Bank $750 with interest in St. Louis.

588 Same proportion of stock to be maintained in Coal or other companies organized to carry out the project as per letter of January 12, 1893, to S. H. Leathe, by Eward L. Thomas.

Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000, and John T. Taylor, $12,700. Each party to receive back amounts advanced to the enterprise as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered, and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the Railway Company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe, until satisfied.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the statement made in my letter to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24, 1893.

(Signed) EDWARD L. THOMAS.

(Objected to; objection overruled by the court; to which ruling of the court defendant then and there excepted.)

Counsel for complainant then gave in evidence record of deeds book 233, page 79, being a deed from Mrs. Snyder to Samuel H. Leathe, and dated February 11, 1893.

"This Indenture Witnesseth, that the grantor, Jane E. Snyder, of the city of Belleville, County of St. Clair, and State of Illinois, for and in consideration of the sum of ten thousand dollars ($10,000) in hand paid, conveys and warrants to Samuel H. Leathe, of the city of St. Louis, and State of Missouri, the following described real estate, to wit:

Lot numbered two hundred and thirty-three (233) of the third

subdivision of Cahokia Commons, bounded as follows, on the east by the Mississippi river, and on the south by a road, including all accretions to said lot as platted by Louis Grauer, which plat is recorded in plat book "D," page 203, of the records of said County of St. Clair, subject to rights of way heretofore granted. Situated in the County of St. Clair, in the State of Illinois, hereby
589 releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 11th day of February, A. D. 1893.

JANE E. SNYDER. [SEAL]"

STATE OF ARKANSAS, *Garland County, ss:*

I, J. W. Corrington, notary public in and for said County, in the State aforesaid, do hereby certify, that Jane E. Snyder, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 11th day of February, A. D. 1893.

[NOTARIAL SEAL.] J. W. CORRINGTON,
Notary Public.

My commission expires April 25, 1893.

Filed for record this 18th day of February, A. D. 1893, at 3.50 o'clock, P. M.

Also record of deeds, book 233, page 223, being a deed from Adams to Leathe, dated March 6, 1893.

"This indenture witnesseth, That the grantors, Ellen Adams, widow of William A. Adams, Bartlett S. Adams, the only child of the said W. A. Adams, and Mabel H. Adams, wife of said Bartlett S. Adams, of the city of St. Louis, State of Missouri, for and in consideration of the sum of seven thousand two hundred dollars, in hand paid, convey and warrant to Samuel H. Leathe, of the city of St. Louis, State of Missouri, the following described real estate, to wit:

All of the coal and mineral underlying and throughout the North-West quarter of Section Fourteen (14), Township One (1) North, of Range Nine (9) West of the 3d P. M., with the right to enter said land underground through any mine or shaft on adjacent lands and remove said coal and mineral without injury to the surface of said tract of land except such as may result from the mining of said coal and mineral in a good, workmanlike manner, in accordance with the most approved methods of modern mining, leaving sufficient pillars and supports to sustain the surface of said land.

Situated in the Town of Stookey, in the County of St. Clair, in

the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption laws of this State.

Dated this 6th day of March, A. D. 1893.

HELEN ADAMS. [SEAL.]
BART S. ADAMS. [SEAL.]
MABEL H. ADAMS. [SEAL.]

590 STATE OF MISSOURI, *City of St. Louis, ss:*

I, Joseph G. Holliday, a notary public in and for said city, in the State aforesaid, do hereby certify, That Ellen Adams (a widow) and Bartlett S. Adams and Mabel H. Adams, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument at their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notarial Seal this — day of March, A. D. 1893.

My term expires September 7, 1894.

JOSEPH HOLLIDAY,
[NOTARIAL SEAL.] *Notary Public, City of St. Louis, Mo.*

Filed for record this 7th day of March, A. D. 1893, at 11:50 o'clock A. M.

Also Record of Deeds, book 228, page 124, being a deed from Jacob Voelinger and wife to Samuel H. Leathe, dated March 8, 1893.

"The grantors, Jacob Voellinger and Christiana Voellinger, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of ($10,000) ten thousand dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral, in, under and throughout the following described land, situated in said County of St. Clair, to wit: The North one-third of the South-East quarter and the North one-third of the East half of the South-West quarter of Section 24, Township One North, Range 9 West, containing (80) eighty acres. Also Lot 3, part of the North-East quarter of Section 24, Township One North, of Range Nine West, as platted in the recorder's office of said county, in book "A," page 258, containing 100 acres, excepting two acres in the shape of a square, the center of which shall be the house now on said premises; and the grantors further grant to said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; Provided the same shall not interfere with any buildings or destroy any growing crops. And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being thirty feet on each side of the center
591 of the track of said railroad as the same is now located and

graded across said land. Upon the condition that the grantee makes and maintains an under trackway across said right of way for use of grantors. And the grantor further covenants that he will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 8th day of March, A. D. 1893.

JACOB VOELLINGER. [SEAL.]
CHRISTIANA VOELLINGER. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Lucius D. Turner, a notary public, in and for said county, in the state aforesaid, do hereby certify, that Jacob Voellinger and Christine Voellinger, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that they signed, sealed and delivered the said instrument including the release and waiver of the right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this eighth day of March, A. D. 1893.

[NOTARIAL SEAL.] LUCIUS D. TURNER, *N. P.*

Filed for record this 8th day of March, A. D. 1893, at 2:30 o'clock P. M.

Also Record of Deeds, book 224, page 168, being a deed from Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893.

"The grantor, Joseph Ehrstein, of the county of St. Clair, and State of Illinois, for and in consideration of the sum of $4,000 to him paid, hereby conveys and warrants unto Samuel H. Leathe, of the city of St. Louis, and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land, situated in the said county of St. Clair, to wit:

The south half of the north-east quarter of section 14, township one north, range nine west, containing (80) eighty acres.

The grantor further grants to the said grantee and his assigns the perpetual right to pass and repass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns. Provided the same shall not interfere with any buildings or destroy any growing crops.

592 And the grantor also grants to the said Leathe and his assigns, the right of way over said land for a railroad, being thirty feet on each side of the center of the track of said railroad as the same is now located and graded across said land.

And the grantor further covenants that he will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor hereby releasing and waiving

all rights under and by virtue of the homestead exemption laws of this state.

Dated this 27th day of February, A. D. 1893.

JOSEPH EHRSTEIN. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public for said county, in the state aforesaid, do hereby certify, that Joseph Ehrstein, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given this day under my hand and notarial seal this 27th day of February, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record February 27, 1893, at 11:20 o'clock, A. M.

Also Record of Deeds, book 224, page 169, being a deed from Mary Voellinger and husband to Samuel H. Leathe, dated March 1, 1893.

"The grantors, Mary Helena Voellinger and Peter Voellinger, of the county of St. Clair, and State of Illinois, for and in consideration of the sum of twelve thousand and four hundred and fifty dollars ($12,450) to them paid, hereby convey and warrant unto Samuel H. Leathe, of the city of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land situated in said county of St. Clair, to wit: Lot 3, part of the north-east fractional quarter of section 19, township one north of range 8 west, as platted in recorder's office of said county, in book "C," page 397, containing thirty-eight and one-half (38½) acres; also lot No. 1, part of the north-east quarter of section 24, township 1 north, of range 9 west, as platted in the recorder's office of said county, in book "A," page
593 258, and containing twenty-six (26) acres; also lot No. 4, being the north-west fractional quarter of section 19, township one north, of range 8 west, as platted in the recorder's office of said county, in book "C," page 397; and containing 105 acres, excepting three acres in a square of which the house now on said premises shall be the center.

And the grantors further grant to said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; provided the same shall not interfere with any buildings or destroy any growing crops.

And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being thirty feet on

each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way to any other coal switch over any of said land except to the grantee or his assigns; the grantors hereby releasing and waiving all rights under and by virtue of the Homestead Exemption laws of this state.

Dated this first day of March, A. D. 1893.

MRS. MARY HELENA VOELLINGER. [SEAL.]
PETER VOELLINGER. [SEAL.]

For and in consideration of the money paid to the foregoing grantors by the said Samuel H. Leathe, I hereby consent to the execution of the said deed by the said Mary Helena Voellinger and Peter Voellinger, her husband, to the said Samuel H. Leathe, and do affirm the conveyance of the coal and mineral underlying the tracts therein described to him, the said Samuel H. Leathe.

Dated this 1st day of March, A. D. 1893.

her
MARY ANNA x SCHMISSEUR. [SEAL.]
mark

Witness to signature:
L. D. TURNER.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public, in and for said County, do hereby certify, That Mary Helena Voellinger and Peter Voellinger, her husband, and Mary Anna Schmisseur, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said
594 instrument, including the release and waiver of the rights of Homestead as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial seal this first day of March, 1893.

HENRY M. NEEDLES,
[NOTARIAL SEAL.] *Notary Public.*

Filed for Record March 1, 1893, at 12:45 o'clock P. M.

Also, Record of deeds, Book 224, page 170, being deed of Peter Voellinger and wife to Samuel H. Leathe. Dated March 1, 1893.

"The grantors, Peter Voellinger and Mary Helena Voellinger, of the County of St. Clair and State of Illinois, for and in consideration of the sum of Two Thousand Five Hundred and Fifty Dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under, and throughout

the following described land, situated in said County of St. Clair, to wit: the South two-thirds of the South East quarter of Section 24, Township one North, of Range nine West, containing one hundred six and two-thirds (106⅔) acres.

And the grantors further grant to the said grantee and his assigns the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; provided, the same shall not interfere with any buildings or destroy any growing crops. And the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being thirty feet on each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land, except to the grantee or his assigns, the grantors hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this first day of March A. D. 1893.

PETER VOELLINGER. [SEAL.]
MRS. MARY HELENA VOELLINGER. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public within and for said county, do hereby certify, That Peter Voellinger, and Mary Helena
595 Voellinger, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument, including the release and waiver of the right of Homestead, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this first day of March, 1893.

HENRY M. NEEDLES,
Notary Public.

[NOTARIAL SEAL.]

Filed for record March 1, 1893, at 12:45 o'clock P. M.

Also Record of deeds, Book 224, page 172, being a deed from Peter Schwinn and wife to Samuel H. Leathe. Consideration $13,500, dated Feb. 27th, 1894.

"The grantors, Peter Schwinn, and Josephine Schwinn, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of $135 dollars to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and mineral, in, under and throughout the following described land, situated in said County of St. Clair, to wit:

Lot No. 2, part North East quarter of Section 24, Township one North, Range 9 West, as platted in Recorder's office of said County, in Book "A," page 258, containing thirty-four (34) acres; also the North West quarter of Section 24, Township one North, Range nine West, containing one hundred and sixty acres (160), excepting all that part of the same lying North of the County road where the house now stands; also the South half of the South West quarter of Section 13, Township one North, Range 9 West, containing eighty (80) acres.

And the grantors further grant to the said grantee and his assigns the perpetual right to pass and re-pass through said land, underground, for mining purposes, and the right to sink and maintain an air shaft on said land at any place to be selected by said grantee or his assigns, provided the same shall not interfere with any buildings, or destroy any growing crops; and the grantors also grant to the said Leathe and his assigns the right of way over said land for a railroad, being fifty feet on each side of the center of the track of said railroad, as the same is now located and graded across said land.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land except to the grantee or his assigns, the grantor hereby re-
596 leasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this 27th day of February, A. D. 1893.

PETER SCHWINN. [SEAL.]
JOSEPHINE SCHWINN. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a Notary Public within and for said county, do hereby certify, That Peter Schwinn, and Josephine Schwinn, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that they signed, sealed and delivered the said instrument, including the release and waiver of the right of Homestead, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of February, 1893.

HENRY M. NEEDLES,
Notary Public.

[NOTARIAL SEAL.]

Filed for record March 3, A. D. 1893, at 9:30 A. M.

Also Record of Deeds, book 224, page 131, being a deed from Valentine Keck to Samuel H. Leathe, dated March 8, 1893.

"The grantor, Valentine Keck, of the County of St. Clair and State of Illinois, for and in consideration of the sum of $4,000 to him paid, hereby conveys and warrants unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all

the coal and other mineral, in, under and throughout the following described land, situated in the County of St. Clair, to wit:

Eighty (80) acres off the west side of the south-west fractional quarter of section 19, township one north, range 8 west, excepting therefrom two acres in a square, of which the house on said tract of land shall be in the center.

And the grantor further grants to the said grantee, and his assigns, the perpetual right to pass and re-pass through said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee or his assigns; provided the same shall not interfere with any buildings or destroy any crops.

And the grantor further covenants that he will never grant the right of way for a coal switch over any of said land except to the grantee, or his assigns, the grantor hereby releasing and
597 waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 4th day of March, A. D. 1893.

[SEAL.] VALENTIN KECK, SR.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, Notary Public, within and for the county and state aforesaid, do hereby certify that Valentine Keck, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 16th day of March, 1893.

HENRY M. NEEDLES,

[NOTARIAL SEAL.] *Notary Public.*

Filed for record March 16, 1893, at 12:50 o'clock P. M.

Also record of deeds, book 224, page 182, being a deed from Edward L. Thomas and wife to Samuel H. Leathe, dated March 8, 1893.

The grantors, Edward L. Thomas and Mary O. Thomas, his wife, of the County of St. Clair and State of Illinois, for and in consideration of the sum of one dollar to them paid, convey and quit-claim to Samuel H. Leathe, of the City of St. Louis and State of Missouri, the following described real estate, to wit: All that part of Lot No. 69, of Cahokia Common Fields, lying north-east of the Brouillette creek, as the same now crosses said lot, being part of surveys one hundred four and one hundred five, as platted by G. F. Hilgard and recorded in recorder's office of said county in book "E" of plats, page 16.

Also lot No. 72 on Hilgard's plat of Cahokia Common Fields, as platted and recorded in book "E," page 16 of the records of said county, being all that part of surveys one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and eleven, in said Common Fields, lying south-east of the right of way of the St. Louis, Alton and Terre Haute Railroad as now constructed across said surveys, and containing twenty-five and one quarter acres: also, lot No. 3, containing twenty-five acres, being part of the west half of the north-east quarter of section No. 9, township one north, of range 9 west, as platted in plat book "A," page 395 of the records of said county, reference thereto being had: all situated in the
598 county of St. Clair and State of Illinois. The grantors hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 8th day of March, 1893, A. D.

EDWARD L. THOMAS. [SEAL.]
MARY O. THOMAS. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, a notary public in and for the county and state aforesaid, do hereby certify, that Edward L. Thomas and Mary O. Thomas, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed sealed and delivered the said instrument as their free act and deed, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 9th day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 16, 1893, at 12:50 P. M.

Also, record of deeds, book 224, page 183, being a deed from Forst and Boul to Samuel H. Leathe, dated March 13, 1893.

The grantors, Alois Forst and Catharina Forst, his wife, Chrisosthomus Boul and Mary Ann Boul, his wife, of the county of St. Clair and State of Illinois, for and in consideration of the sum of $4,750 dollars, to them paid, hereby convey and warrant unto Samuel H. Leathe, of the City of St. Louis and State of Missouri, and his assigns, all the coal and other mineral in, under and throughout the following described land, situated in the county of St. Clair, to wit:

The north half of the north-east quarter of section 14, township one, of range nine west, containing (80) eighty acres: also, lot No. 1, part of the south-east quarter of section 11 in said township and range, said lot containing 15 acres as platted in plat book

"C," page 13 of the records of said county, reference thereto being had for a more particular description of said lot.

And the grantors further grant to said grantee, and his said assigns the perpetual right to pass and repass throughout said land underground for mining purposes, and the right to sink and maintain an air-shaft on said land at any place to be selected by said grantee, or his assigns. Provided, the same shall not interfere with any building or destroy any growing crops.

599 The grantor also grants to said Leathe and his assigns the right of way over said land for a railroad, being fifty feet on each side of the center of the track of said railroad as the same is now located and graded across said lands.

And the grantors further covenant that they will never grant the right of way for another coal switch over any of said land except to grantee or his assigns, the grantors hereby releasing and waiving all rights under and by virtue of the Homestead Exemption laws of this State.

Dated this 13th day of March, 1893, A. D.

ALOYSE FORST. [SEAL.]
CH. BOUL. [SEAL.]
MARY ANN x BOUL. [SEAL.]
CATHERINE FORST. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss*

I, Henry M. Needles, a notary public within and for said county, do hereby certify, that Alois Forst and Catherine Forst, his wife, and Chrisosthomas Boul and Mary Ann Boul, his wife, personally known to me, to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day, in person and acknowledged that they signed, sealed and delivered the said instrument including the release and waiver of the right of homestead, as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of March A. D. 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 16, 1893, at 12:50 P. M.

Also a deed from Samuel Leathe to the Belleville City Railway Company for property described therein, dated March 25, 1893, and recorded in book 224, page 195; also deed from Samuel H. Leathe to Crown Coal and Tow Company, dated March 25, 1893, and recorded in book 124, page 193.

"Samuel H. Leathe, widower, of the city of St. Louis and State of Missouri, the grantor, in consideration of the sum of Four hundred and Ninety-nine thousand five hundred Dollars, to him paid by the Belleville City Railway Company, a corporation of the State of Illinois, duly organized and existing under and by virtue of

an act of the General Assembly of said last named state, entitled "An act to incorporate the Belleville City Railway Company, approved February 25, 1867," hereby grants, bargains, sells and conveys unto the said Belleville City Railway Company, all the following described lands, tenements, easements and rights situated and being in the county of St. Clair and State of Illinois.

600 Lot No. two hundred and thirty three (233) in the third subdivision of Cahokia Commons with all the accretions thereto. Also all that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the Belleville & St. Louis Railway Company, by deed bearing date December 12, 1890, and recorded herewith, a reference to said deed being made for a more particular description, together with all the grading and superstructures thereon. Also all the rights of way and easements conveyed to the said grantor by the following deeds:

From Joseph Ehrstein to Samuel H. Leathe, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Mary Helena, his wife, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 170.

From Mary Helena Voellinger and Peter, her husabnd, dated March 1, 1893, and recorded in said recorder's office, book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated, March 8, 1893, and recorded in said recorder's office in book 228, page 124.

From Alois Forst and Catherine, his wife, and Chrisostomus Boul and Mary Ann, his wife, dated May 13, 1893, and recorded in the recorder's office in book 224, page 183.

Also all the lands, easements, rights of way, grading and superstructure thereon, conveyed to the grantor by the Belleville & St. Louis Railway Company, by its deed of even date herewith, recorded herewith, to which reference is made, the grantor hereby covenanting and agreeing to and with the said grantee to convey to it on demand any land, easements, right of way, privilege or immunity, which he may hereafter acquire from the said Belleville & St. Louis Railway Company under the covenants of its said deeds.

Also the following described land in St. Clair County, all that part of lot 69 of the Cahokia Common Fields, lying north-west of the Brouillette Creek as the same crosses said land, being part of surveys 104 and 105, as per plat recorded in said recorder's office in book "E," page 16. Also lot 72 on Hilgard's plat of the Cahokia Common Fields as recorded in said recorder's office in plat book "E," page 16.

Also lot 3 containing 25 acres, being part of the west half of the north-east quarter of the north part of the west half of the
601 south-east quarter of section 9, township one north, range nine west, as shown on plat recorded in said recorder's office in plat book "A," page 395.

Dated this 25th day of March A. D. 1893.

SAM'L H. LEATHE. [SEAL.]

STATE OF ILLINOIS, *County of St. Clair:*

I, Henry M. Needles, notary public in and for said county in the state aforesaid, do hereby certify that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me, this day, in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 29, 1893, at 4:50 P. M.

"The grantor, Samuel H. Leathe, widower, of the city of St. Louis and State of Missouri, in consideration of the sum of one hundred and ninety-one thousand one hundred dollars to him paid by the Crown Coal and Tow Company, hereby sells and conveys to the Crown Coal and Tow Company all the following described real estate, situated and being in the county of St. Clair and State of Illinois, to wit:

First. All the coal and other mineral in, under and throughout the south half of the north-east quarter of section 14, township one north, range nine west.

Second. All the coal and other mineral in, under and throughout the north-west quarter of section 14, township one north, range nine west.

Third. All the coal and other mineral in, under and throughout the south two-thirds of the south-east quarter of section 24, township one north, range nine west.

Fourth. All the coal and other mineral in, under and throughout the north one-third of the south-east quarter, and the north one-third of the east half of the south-west quarter of section 24, township one north, range nine west, and lot three, part of the north-east quarter of the same section as said lot appears upon a plat recorded in the recorder's office of said county in Plat Book "A," page
602 258, excepting, however, from the 100 acres of coal covered by this fourth paragraph, two acres in a square the center of which is the house now on said premises.

Fifth. All the coal and other mineral in, under and throughout the following described land. Lot three (3), part of the north-east fractional quarter of section (19), township one north, range eight west, being thirty-eight and one-half acres as the same appears upon the plat recorded in the said recorder's office in Plat Book "C," page 397, and lot one, part of the north-east quarter of section twenty-four, in township one north, range nine west, as the same appears upon a plat recorded in said recorder's office in Plat Book "A," page 258, and containing twenty-six acres, and

lot four of the north-west fractional quarter of section nineteen, township one north, range eight west, as the same appears on a plat recorded in said recorder's office in Plat Book "C," page 397, and containing 105 acres, excepting, however, three acres in a square, of which the house on said premises is the center.

Sixth. All the coal and other mineral in, under and throughout the following described land: The south half of the south-west quarter of Section thirteen (13), Township one North, Range nine west, containing eighty acres. And all that part of the north-west quarter of Section twenty-four, Township one North, Range nine west, lying south of the middle of the county road, and Lot 2, part of the north-east quarter of Section twenty-four, Township one North, Range nine west, as the same appears upon a plat recorded in said recorder's office in Plat book "A," page 258.

Seventh. All the coal and other mineral in, under and throughout the following described land: The north half of the north-east quarter of Section fourteen, Township one North, Range nine west. Also Lot one, part of the south-west quarter of Section 11, Township one North, Range nine west, as the same appears upon a plat recorded in said recorder's office, in Plat book "C," page 13.

Eighth. All the coal and other mineral in, under and throughout the following described land: Eighty acres off the west side of the south-west fractional quarter of Section 19, Township one North, Range eight west, excepting two acres in a square of which the house on said premises is the center.

Also the following described land: The south-west quarter of Section eleven, Township one North, Range nine west, excepting tract of land described in deed made by Edward McDonald and Sylvester McDonald to Phillip Schaefer, dated March 23, 1893, and duly recorded in said recorder's office, reference being made thereto.

Also the steam tugs Susie Hazard, Baton Rouge Bell, and
603 Archie Parker and barges numbered six, seven, eight, nine, now in use on the Mississippi river, at St. Louis, Missouri.

Also all the coal and mining rights and all privileges, immunities and easements, excepting rights of way, for a railroad conveyed to the said grantor by the following deeds of conveyance. From Joseph Ehrstein, dated February 27, 1893, and recorded in the recorder's office of St. Clair County, Illinois, in book 224, page 168.

From Peter Voellinger and Mary Helena, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 170.

From Mary Helena Voellinger and Peter, her husband, dated March 1, 1893, and recorded in said recorder's office, in book 224, page 169.

From Peter Schwinn and Josephine, his wife, dated February 27, 1893, and recorded in said recorder's office, in book 224, page 172.

From Jacob Voellinger and Christina, his wife, dated March 8, 1893, and recorded in said recorder's office, in book 228, page 124.

From Alcis Forst and Catherine, his wife, and Christomus Boul

and Mary Ann, his wife, dated March 13, 1893, and recorded in said recorder's office, in book 224, page 183.

SAM'L LEATHE. [SEAL.]

Dated March 29, 1892.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I, Henry M. Needles, Notary Public, in and for said county, in the State aforesaid, do hereby certify, that Samuel H. Leathe, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 29th day of March, 1893.

[NOTARIAL SEAL.] HENRY M. NEEDLES,
Notary Public.

Filed for record March 29, 1893, at 4:50 P. M.

Complainant then gave in evidence the Bill in Chancery filed by Alpheus S. Boling *vs.* Belleville & St. Louis Railway Company.

604 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1893.

To the Honorable Judge of said Court, in Chancery Sitting:

Your orators, Edward L. Thomas and Alpheus Boling, late partners under the firm name of Boling and Thomas, who sue*th* for use of Alpheus Boling, of the county of St. Clair, and State of Illinois, aforesaid, respectfully represents unto your Honor that said Alpheus Boling is by occupation a farmer and contractor for ground work, such as grading building lots, streets, public highways, railroads, furnishing and laying tiling for the purpose of draining such roads, streets and lands, and such other work as pertains to the construction of streets, highways and railroads, that on or about October, 1890, your orator, Alpheus Boling, in connection with Edward L. Thomas, entered into a contract with the Belleville & St. Louis Railway Company, one of the defendants hereinafter named, to do certain grading and other work in and about constructing the road-bed on the right of way of the Belleville & St. Louis Railway Company, for a consideration of thirteen cents per cubic yard, to be paid for from time to time as the work was done, upon estimates made by the civil engineer in charge of the work; that a large amount of work was done under said contract at said price; that afterwards your orator entered into another and further contract for grading another portion of the right of way of the said Belleville & St. Louis Railway Company with the said Company for a price of

eighteen cents per cubic yard of dirt moved and graded to be paid for from time to time upon estimates made by the civil engineer in charge of the construction of said railroad; that your orators were partners in the performance of the said work under the said contracts with the said Belleville & St. Louis Railway Company; that the partnership existed between your orator Alpheus Boling and the said Edward L. Thomas only as to their teams, scrapers, and other tools and implements used by them in and about the said work as they might do in that line, that as such partners your orators Alpheus Boling and Edward L. Thomas continued to do the grading of the right of way of the said Belleville & St. Louis Railway Company under the said contracts until about April 1st, A. D. 1893; that they had earned under said contracts up to that time about forty-two thousand dollars ($42,000); that they had furnished tiling and put the same in at various points on said right of way with the agreement that they were to have for the same what the material and work was reasonably worth; that under the same arrange-
605 ments your orators have heretofore constructed various culverts along said right of way in the road of said Belleville & St. Louis Railway.

Your orators further represent that various sums from time to time have been paid to your orators during the performance of the said work; that during the latter part of March, A. D. 1893, about the 25th day of the said month your orators performed their last work and furnished the last material for said work by them done and furnished as such partners under the said contracts with the said Belleville & St. Louis Railway Company.

Your orators further represent that on the said 25th day of March A. D. 1893, there was due to your orators for work under their said contracts for grading, tiling, making culverts, and materials furnished in and about the same, upon the road bed and right of way of said the Belleville & St. Louis Railway Company from said railway company, a balance of Fifty-three Thousand Dollars; that afterwards on the first day of April, A. D. 1893, the said sum of Fifty-three thousand dollars ($53,000) still being due and unpaid to your orators a settlement and adjustment of their partnership affairs with reference to their said work under their said contracts with the Belleville & St. Louis Railway Company and the respective amounts which each of them—your orators, Alpheus Boling and the said Edward L. Thomas—were entitled to, of the said sum due them, from the said Belleville & St. Louis Railway Company as aforesaid was had by and between the said Edward L. Thomas and your orator, Alpheus Boling. And in and by said settlement and adjustment of their said partnership affairs it was agreed by and between the said Edward L. Thomas and your orator, Alpheus Boling, that of the money due them for work and labor in grading the right of way of the said railway company, as aforesaid, your orator, Alpheus Boling, was to have the sum of Six Thousand Dollars ($6,000) in full of his share and interest in the amount due Thomas and your orator, Alpheus Boling, as partners as aforesaid, and that the said Edward L. Thomas was to have the

remainder of the amount due the said firm as his individual share; that the said partnership of said Thomas and your orator, Alpheus Boling then and there ceased to exist, and your orator, Alpheus Boling, has been entitled to receive as his individual property the sum of Six Thousand Dollars from the said Belleville & St. Louis Railway Company, of which the said Belleville & St. Louis Railway Company had notice.

Your orators further represent that the said Belleville & St. Louis Railway Company consented to said arrangement between your orators, and thereafter understood and knew that it was to pay your orator, Boling, said sum of $6,000 as his part of said claim and in full thereof, and the balance to E. L. Thomas.

606 Your orators further state that no part of said sum of Six Thousand Dollars has been paid to your orator, Alpheus Boling, or in any manner secured to him by the said Belleville and St. Louis Railway Company or any other person or persons for or on its behalf; that the said grading and work was performed by your orator as aforesaid as required by the said Belleville & St. Louis Railway Company and its assigns between the City of East St. Louis and the city of Belleville, both in the county of St. Clair in the State of Illinois, all of said right of way being situated in the County of St. Clair in the State of Illinois and described as follows, viz:

A roadway for railway purposes located on a tract of land, being part of lot 73 of Cahokia Common Fields, as recorded in book of plats "E," page 16, in the recorder's office of St. Clair county, Illinois, and more fully described in a deed of the St. Louis, Alton and Terre Haute Railroad Company, recorded in the recorder's office of St. Clair county, Illinois, in book 224, page 196, and which said roadway crosses with its middle line the north-westerly line of said lot 73 at a point 65 feet distant, at right angles to the middle of said St. Louis, Alton and Terre Haute Railroad, and runs in a south-easterly direction across said tract of land according to the terms of said above mentioned deed, together with its extension across lots 69, 70 and 72 of Cahokia Common Fields, as recorded in plat book "E," page 16, in the recorder's office of St. Clair county, Illinois, across lots 3 and 9 of section 9, township one (1) north, range nine (9) west, as recorded in plat book "A," page 395, of the recorder's office of St. Clair county, Illinois; across the north half of section 10, township one north, range nine (9) west; the east half of south-east quarter of same section; across the south-west quarter of section 11, township one north, range nine west; across the north half of section 14, T. 1 N. R. 9 west; across lots 9, 10, in the north-west quarter of the south-west quarter, the east half of the south-west quarter, and lot 8, all a part of section 13, T. 1 N. R. 9 west, as platted in book "C," on page 11, recorder's office of St. Clair county, Illinois; across the north-east quarter section twenty-four (24), township one north, range 9 west; across the north-west quarter and the north part of the south half of section 19, township one north, range eight west, and extending into the south-west fractional quarter of section 20, township one north, range 8 west, in a south-easterly direction from a point 17 feet

north of a stone, being the north-east corner of the south-east quarter of south-east quarter of section 19, township one north, range eight (8) west, for a distance of 842 feet. Also, the extension of the said above described roadway across the south-west
607 fractional quarter of section 20, township one north, range 8 west, across a tract of land acquired by condemnation suit of the Belleville City Railway Company against William Brandenburger, by proceedings in the County Court of St. Clair county, Illinois, and recorded in the County Court record 2, page 563 of said County Court records; across part of lot 11 of Miller's Subdivision of survey 649, recorded in plat book "A," page 4, of the recorder's office of St. Clair county, Illinois; across lots 10, 11, 14, 15, 16, 17, 20, 21 and 24 of St. Clair Addition to the city of Belleville, recorded in plat book "F," page 8, in the recorder's office of St. Clair county, Illinois; across lot 9 of Miller's Subdivision of survey 648, recorded in plat book "A," page 4; lot 17 of survey 649, and lot 16 in the north-west fractional quarter of section 28, township one north, R. 8 west, as recorded in plat book "A," page 195, in the recorder's office of St. Clair county, Illinois; across lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the First Addition to St. Clair Addition, as recorded in book "G," page 15 of the recorder's office of St. Clair county, Illinois; and across lots 41, 42, 44, 45, 46, 47, 48 of Bommon's Addition to the Town of West Bellville, now City of Belleville, all situated in the county of St. Clair and State of Illinois.

Your orators further represent that on the 25th day of March, 1893, the Belleville & St. Louis Railway Company, by its deed of that date, conveyed and transferred all of its rights, title, and interest in and to said real estate comprising the said roadway and all easements therein, to one Samuel H. Leathe, for the consideration of one dollar and other valuable considerations; that the other valuable considerations were that grantee would assume and pay all claims against said Belleville & St. Louis Railway Company, including your orator's claim; that the said Samuel H. Leathe in pursuance of an arrangement and understanding then entered into without any further consideration, coveyed all interest to be acquired by the above mentioned deed in and to said roadway right of way, to the Belleville City Railway Company; that the latter company had full and complete notice of the indebtedness of the said Belleville & St. Louis Railway Company and accepted the said grant thereof with the understanding and knowledge that it would have to pay the said indebtedness, and that the amount due your orator, Alpheus Boling, was a lien upon said right of way of the Belleville & St. Louis Railway Company.

Your orators further represent that neither the said Belleville & St. Louis Railway Company, Samuel H. Leathe or the said Belleville City Railway Company will pay them the amount so due your orators or any part thereof; that your orator, Alpheus Boling, has never received or accepted any other security
608 therefor than his statutory right to a lien upon the above described right of way and road bed.

Forasmuch, therefore, as your orators, for use of Alpheus Boling, as aforesaid, are without remedy, except in a court of equity, they file this, their bill of complaint herein, making the said Belleville & St. Louis Railway Company and the Belleville City Railway Company parties defendant thereto, and pray that they may be summoned to appear on the first day of the September Term, A. D. 1893 of this court, and held to make full and direct answer thereto, but not under oath, their answer under oath being waived, that upon a hearing hereof an account may be taken as to the amount due your orator, Alpheus Boling, and the same adjudged and decreed to be a lien upon the right of way and road bed of the defendants hereinabove described, and in case the same is not paid to your orator by a short day to be fixed by the court, that the said right of way and road bed be ordered to be sold under the direction of the court, and out of the proceeds thereof, there be paid the costs and expenses of this suit and sale, and then the amount so found to be due your orator, Alpheus Boling, together with the legal interest thereon, in accordance with the statute in such case made and provided.

And that your Honor will grant your orators such other and further relief as to your Honor shall seem meet, and to equity and justice may appertain, etc.

EDWARD L. THOMAS AND
ALPHEUS BOLING,
Late Partners, Who Sued for the Use of
Alpheus Boling, Complainants.

R. D. HOLDER,
Solicitor for the Complainants.

Filed Dec. 2, 1893.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair Co., Ill.

And complainant proved that said cause was then pending in said court, but that said cause was dismissed by complainant therein before the hearing herein.

609 C. F. STEVENS, sworn for the complainant, testifies as follows:

Direct examination by Mr. KOERNER:

Q. What is your name?
A. C. F. Stevens.
Q. What is your business and occupation?
A. Civil engineer.
Q. Where have you been employed since January of this year?
A. On a railroad between here and East St. Louis, that we call the Belleville City Railway.
Q. What time did you begin work on that railroad?
A. The second week in January of this year.
Q. Who employed you, Mr. Stevens?

A. Well, in the first place I was indirectly employed by Mr. Chipley, who wished me to come and go with him and Mr. Leathe to look over some ground in East St. Louis, and a few days after that I was employed by Mr. Leathe.

Q. Who has paid you your compensation from that time on for that?

A. Mr. Leathe has.

Q. You began the second week in January, I understand?

A. Yes, sir, about that time; about the end of the second week. About the tenth or twelfth of January was about the time I first met Mr. Chipley about this work.

Q. What was the first work you did in the matter?

A. That was to go over the ground in East St. Louis with Mr. Leathe and Mr. Chipley, and Mr. Thomas was also present; at that time we went over the ground and took a general view with a view of obtaining the railroad facilities there for a terminal.

Q. What work, if any, did you do from the time of your first employment until about the end of March?

A. In February I made a survey of the line as now being built on the East St. Louis end and also a survey of the line as has been built since, from the former terminus of the road as left Mr. Thomas; about a mile and a half from this city, the city limits; and in addition to that I went over the line of the road between St. Louis and Belleville very carefully and made an examination of it.

Q. Was there any property purchased by Mr. Leathe for railroad purposes during that time, that you know of?

A. I was told there was; I only know it from hearsay.

Q. Are you acquainted with this Snyder lot, lot 233 of Cahokia Commons?

A. I am.

610 Q. For what purpose was that acquired?

A. That was acquired for the purpose of a terminal on the river, for a coal dump and an incline to transfer cars.

Q. For this railroad?

A. For this railroad, yes, sir.

Q. Do you know of any trips, during that time to Cahokia for the purpose of purchasing right of way?

A. Yes, sir, during the month of March, Mr. Thomas and I went down to Cahokia and saw several land owners there who owned land in Cahokia Commons, Mr. McCracken, Mr. Lavalle, Mr. —, Mr. Papere and Mr. Thomas made arrangements with them to obtain certain lands there that was to be used for a right of way.

Q. Was that subsequently obtained, that you know of?

A. It was.

Q. Do you know whether Mr. Leathe purchased those lands?

A. I saw him make payments on those lands to those people.

Q. Did you make a survey of the grad ng of work that had been done prior to your connection with the road?

A. Yes, sir.

Q. State to the Court what amount of work had been done at that time?

A. It had been graded to a point on the east of the Cahokia rock road a few hundred feet out to a point on the Tilling land west of Belleville, and distant from here about a mile and a half, with the exception of a cut on some land owned by Mr. Ehrstein, and, I think, Emge or Atchison, and also a small piece of work on a farm owned by Mr. Thomas up at the road crossing at the top of the hill.

Q. State as to the amount of excavation and filling that had been done.

A. The excavation and filling amount to 232,000 yards.

Q. Did you have any information in arriving at these figures from Mr. Thomas?

A. Yes, sir. I had a profile of the work, of the cuts and fills, and the elevation of the original surface and the center line; that was furnished me by Mr. Thomas.

Q. Did you use that in your survey?

A. Yes, sir. I verified that subsequently, and found that to be correct.

Q. And you used that in making your estimate?

A. Yes, sir.

Q. That was the work already done?

611 A. It was the work done prior to the first time I went over the road, which was some time in January.

Q. Are you acquainted with the prices prevailing for this work of this character?

(Objected to by the defendant; objection overruled by the court. To which ruling of the court the defendant then and there excepted.)

A. I am familiar with work of that kind.

Q. What would be a reasonable compensation for that work, according to such prices?

A. Well, there are different ways of letting work of that kind. One is by letting both excavation and embankment, or, as it is called, pay both ways; and the other is paying entirely by excavation, and paying a haul where you have to haul from a cut into a fill. The first way, about the average price for this class of work in this territory—that is, within a hundred miles of here—has been about ten cents per yard each way; so much for excavation, and so much for embankment.

Q. Ten cents for excavation and ten cents for filling?

A. Yes, sir, and if the excavation goes into the fill, then it is twenty cents paid for excavation, payable both ways, and if it is by excavation only and you pay extra for a haul over a certain limit, which varies; some roads it is 100, some 200 and some 300 feet. The work that was done on the line last summer had a limit of 100 feet haul and paid a cent a yard for each 100 feet further.

Q. Well, how much difference in the computation for this work?

A. Well, this work that has been done here, the figures on the excavation would be about fifteen and a half cents a yard, but if it had been pay both ways, it would have been a little more.

Q. That is fifteen cents for excavation?

469

A. Yes, sir.

Q. Now, what is the amount of the excavation—you are talking about the work that you have done?

A. Yes, sir.

Q. That you were doing yourself?

A. Yes, sir.

Q. This work that you found had already been done and you stated you figured that out a certain price for filling and for excavation?

A. Both ways would be about ten cents a yard.

Q. That would be about right?

A. Yes, sir, that is about the average price.

612 Q. Can you tell how that would have compared if the same work had been done on the other plan which you have mentioned?

A. It would have paid the contractor a little, a little more money if he had ten cents both ways, than if he had been paid by excavation and a haul.

Q. Ten cents both ways would be a little better for the contractor?

A. Yes, sir, a little bit better.

Q. During this time, prior to the 25th day of March, did I understand you to say, there had been 232,000 yards?

A. 232,000 in round figures and 300 are the exact figures.

Q. Can you remember an instance of re-surveying a piece of work, for which payment was made by Mr. Leathe, in which you found an excess of two thousand yards?

A. I do.

Q. Is that figured in that?

A. I have not taken that into consideration when I say 232,000 yards.

Q. State that circumstance?

A. I had instructions to go and measure a piece of work that had been done some four or five miles from here, and I did so, and found it was about five thousand yards, and a payment had been made on an estimate of seven thousand and some six or seven hundred yards, leaving a discrepancy of over two thousand yards.

Q. Did you deduct that from the total amount of 232,000 yards?

A. No, sir, deducting that it would leave a net of about 230,000 yards.

Q. A net of 230,000 yards?

A. Yes, sir.

Q. Since the first of April that work has been carried on there; what work has been done?

A. In the month of April a contract was let for all of the grading from the river and from the connection with the Cinlogue road in East St. Louis out to Belleville.

Q. Has there been any raising of the railroad track?

A. In the bottom we raised for a distance of about three and a half miles, and some work was done out here.

Q. For a distance of three and a half miles the old grade was raised, you say?

A. Yes, sir.

Q. Why was that done?

A. Well, it was to get it out of the high water, and it was
613 thought advisable to do so, as this was the dry season, to raise the grade.

Q. Was it widened too?

A. It was widened, yes, sir. It was widened and raised; it is now thirteen feet wide.

Q. Do you know who paid the bills for the work since that time?

A. Mr. Leathe has.

Q. Can you tell us about what Mr. Leathe has paid for work on that road since that time?

A. On the grading?

Q. Yes, sir.

A. He has paid for 88,000 yards, about twelve thousand dollars, less a percentage that it is customary to hold back on the contractor until his contract is finished.

Q. Was there any other work done besides grading?

A. There is some culvert work done to the extent of about $1,200 and some stone has been purchased and delivered at a culvert that has not been built yet.

Cross-examination by Mr. E. L. THOMAS:

Q. Major Stevens, you say that about the tenth or twelfth of January you were taken by Mr. Chipley and Mr. Leathe over the river to view this land?

A. I did not say that.

Q. You were employed by Mr. Chipley?

A. I first met Mr. Chipley in relation to this land, and indirectly I became employed by Mr. Leathe, and that was very soon after the twelfth of January that we were across the river there together, but I do not remember the date.

—. Now, Major Stevens, you were employed by Mr. Leathe to examine this land prior to the time of his going into any contract or entering into any contract?

A. I do not know anything about the contract, or date of it at all.

Q. You were employed to examine it for him, were you not?

A. I was employed by him as engineer.

Q. To examine this line?

A. And to make surveys and so forth.

Q. To examine it for him; was there not another arrangement afterwards made?

A. There was a further talk about it on the 21st day of Febru-
ary.

614 Q. Was there not a distinct employment after the 25th of March?

A. No, sir.

Q. Did you have any knowledge of or have you seen the contract that was entered into at that time?

A. Only indirectly—by hearsay.

Q. From Mr. Leathe himself?

A. He made a contract with some people.

Q. That was with me to go on building the road?

A. To go on building the road, but as to saying I had it directly from Mr. Leathe I cannot say that.

Q. Now you state you do not know whether this lot was bought for this road or not, do you?

A. Only what I was told, that is all.

Q. You do not know in whose name the title was taken?

A. No, sir; I never saw the deed.

Q. And do you know anything about what the contracts were or what they were to be, or anything of that kind?

A. Nothing.

Q. Now, Major Stevens, did you make a critical examination of this line, going over it several times prior to the 24th of January, 1893, didn't you?

A. Only once; I was over it once.

Q. You made figures on it?

A. Approximate figures, yes.

Q. You reported to Mr. Leathe, didn't you?

A. I made an approximate report, yes.

Q. You reported to Mr. Leathe in such a way; you made a report to him on this whole scheme, didn't you, and gave your opinion as a civil engineer?

A. Upon the whole scheme? We had a good many conversations relating to it.

Q. Did you not report to him and gave him your opinion verbally?

A. Yes, sir.

Q. Now, Mr. Stevens, in your estimate of the work done and that work that was not done, this place that you speak of on the Thomas farm is a matter of very little consequence?

A. That is a small thing.

Q. That is a very small thing?

A. That is a small thing.

Q. And there is another place at the road going to Emge's house, and there is another one up at Voellinger's, those are a few
615 little places where it was not done on account of crossing the county road?

A. Yes, sir.

Q. Now, in your estimate, Mr. Stevens, did you have any cross-sections?

A. At what time?

Q. In your estimate of the old work? you say now it amounted to 232,000 yards?

A. I took some cross sections myself; I took the level out there and ran the level on the slopes so as to get cross sections.

Q. When did you do that?

A. Last week.

Q. Now, then, from the cross-sections that you took last week you made this estimate?

A. Not entirely from them, no; but I had your figures; figures furnished by you.

Q. On the profile?

A. Yes, sir, and had the center of the line.

Q. Now what width did you take it?

A. I just measured it, I had two men with me and I put a level on and measured it.

Q. How much did you allow?

A. I looked down the slope and took it as near as I could, a direct line on the slope one and a half to one.

Q. That is the way you did it?

A. At some places I allowed as much as four or five feet, because I knew the bank had been washed away by rains.

Q. So you could not tell accurately how many yards there was in that work at the time is was made?

A. Well, that is a matter of opinion Mr. Thomas, I believe I could tell within five per cent.

Q. You think you could tell within five per cent.?

A. Yes, sir, there is no doubt of it.

Q. Well that is all right, you are not more than a thousand cubic yards out of the way, if you say you can tell within five per cent. You believe you could come within five per cent.?

A. I am very certain of it, because I have measured other and similar work, and have come within five per cent. of it, and I think I could on this.

Q. You know there is a great deal of shortage in fills after they stand a year or two without a road being built, or without being kept up a great deal, isn't there?

A. That would not enter into this case; I took your notes and your profile which gave the average level of the ground, and there is your grade line laid, and I took that.

616 Q. Then you could not get it without cross sectioning the fills?

A. Yes, sir.

Q. Did you not find cuts which extended out away beyond the road bed?

A. Yes, sir, I found some of them twenty-six, twenty-eight and think some places thirty feet in width, and I did find some of the cuts as much as sixty or seventy feet in width.

Q. Where we borrowed on the side?

A. Yes, sir, in fact there was one place down there where there wasn't really any cut at all on top of the hill, it had all been taken level the same as the surface.

Q. Now in your estimation, Mr. Stevens, where you had a fill and a cut, what do you say where you have to borrow?

A. That is embankment.

Q. You do not get anything in the cut then for that?

A. No, sir.

Q. Now, what do you say in regard to this; I suppose you have put your price where the work is done under the ordinary methods of carrying on the grading of a railroad carrying out a piece of the

right of way where you have the right to borrow, and waste at such places as necessary to make it the easiest work; is that not true?

A. No, not particularly that; because it is always customary in the older states to haul out the cuts so as to make a suitable bank.

Q. Does that custom prevail here?

A. It does in a very great measure.

Q. Did your contractor not waste a great deal of ground on the sides when he saw fit?

A. No, sir.

Q. He did not?

A. No, sir.

Q. No place at all?

A. He had one place; there was a certain place, and that he wasted; and that is the only place.

Q. He did waste, however, at this place?

A. Yes, sir.

Q. Now, where you are not permitted to waste at a certain place; where you are compelled to haul it from say four, five, six, seven, eight hundred or a thousand feet, and where you have no permission to waste at all, you can not waste; would that make any difference in the contract?

A. Yes, sir; you would be entitled to hauling wherever there is a haul.

617 The COURT: By this do you mean dirt that you cannot use?

Mr. THOMAS: That is, dirt that you cannot use, and have to haul it some place to get rid of it?

Q. This raising that you did down at the bottom, Mr. Stevens, was how much?

A. That varied from a foot and a half to four feet and a half.

Q. At some places it was four feet and a half?

A. I think that the heaviest fall that we had was four feet and six-tenths, and from that down to a foot and a half; it would average something very close to three feet.

Q. How far did you come toward raising up the earthwork of the Cairo Short Line on the side of it?

A. At places I made it the same grade; at old Jarrot station——

Q. We are on very high ground there?

A. Yes, that is high ground.

Q. There is not very much filling there?

A. Well, I had it filled there, four feet and one-tenth above your old grade, and then I ran that grade of line along until across the lake, and there the ground rises somewhat, and I raised my grade about two feet, and on this side of the lake, as far as we went, it is two feet higher than our present elevation down below.

Q. Well, you do not pretend to say that you have it high enough to be above the water of year before last?

A. I was informed by Mr. Chartrand, who livees there, that the high water of two years was at a certain point, and I took a level and, allowing a foot and half for ballast, we are above high

water of two years ago; we are the same elevation as the Cairo Short Line at Jarrot Station.

Q. I mean out further this way?

A. We are as high as that all along, and at some places we are higher.

Q. How many yards did you put in there, did you say, in that work?

A. Well, I put about thirty thousand, above thirty thousand; some thirty-four thousand, is the estimate.

Q. And altogether you have put in about eighty-eight thousand?

A. Up to the first of November, there is an estimate yet to come.

Q. That is, the work that has not been done before?

A. Yes, sir.

Q. Well, you have not done eighty-eight thousand in the old work?

A. Well, that depends upon how you measure it; this figures out at 47,000 excavation, but if you allow and pay both
618 ways it will then make over eighty thousand on this end, but the contract calls for excavation measurements.

Q. And for hauling?

A. And for hauling; yes, sir.

Q. So, Mr. Stevens, the entire work that has been done was the building of one culvert, and the grading of about eighty-eight thousand yards.

A. Well, there have been a number of culverts put in, pipe culverts.

Q. Those you put in at the time you did the grading?

A. These pipe culverts; yes, sir.

Q. I mean large culverts, only one has been built?

A. That is all.

Q. You first commenced work in April?

A. They first began work there about the fifth or eighth of May, along there; I believe the contracts were made in April, yes, sir; they made the contracts then and began work the first week in May.

Q. So you have had May, June, July, August, September, October and November; this has been a very nice season for work, has it not?

A. Yes, sir; it has been a good season for work.

Q. What is your opinion as to whether or not that railroad could not have been completed to the bluff by this time if proper means and proper steps had been taken.

(Objected to.)

The COURT: Ask him whether it could have been completed?

Q. Could it have been completed to the bluff by the exercise of ordinary and reasonable methods of building a railroad?

A. I do not know, for this reason—our survey crosses the lands and tracks of other railroads, and I do not know how much litigation there would have been.

Q. But I am not talking about litigation, I am talking about

building the road out to the bluff, if that matter of litigation were out of the way.

A. The physical work, do you mean?

Q. Yes, sir.

A. Why, yes; it could have been done.

Q. Very well done?

A. Oh, yes.

Q. There is no road crossing, Mr. Stevens, until you get into East St. Louis?

A. No, sir.

619 Q. And that road is what is called the Conlogue road?

A. And the air-line road by the race-track.

Q. Well, I mean going to the river front?

A. That is the Conlogue.

Q. You know of no steps that have been taken to obtain these rights, do you?

A. I do not know, only I was told by Mr. Leathe that he had completed arrangements to meet the officials of the Air-line road, that was more than a month ago, to endeavor to arrange for a right of way.

Q. That was more than a month ago?

A. It was.

The COURT: To go to the river front you would have to cross the Conlogue and the Mobile and Ohio?

A. Yes, sir; and you would have to cross some land owned by the Air-line Railroad.

Mr. THOMAS: That was some land that was in this survey of the yard that was made there for the purpose of going to the River and for the purpose of going to the Tudor Iron Works. It is on that survey?

A. Yes, sir.

Q. We bought a large body of land there for yard room?

A. Yes, sir.

Q. There is a small part of it that belongs to the Air-line road; all the rest was obtained months ago, was it not?

A. No, there is some owned by the Wiggins Ferry Company.

Q. Well, I mean that takes it up to the race-track?

A. No, the Wiggins Ferry Company owns a tract south of the race-track up to this Lavalle lot.

Q. That is, between the Lavalle lot and our main line, down below our yards. That is very little, say, twenty feet?

A. Yes, sir.

Q. Well, the land that is to be used to go out to the river front is owned entirely by the Air Line, is it not, excepting these rights of way?

A. That is owned entirely by the Air Line.

Q. Now, do you know of any steps having been taken in the early spring about obtaining this right of way?

A. Of the Air Line?

Q. Yes, sir.

A. Yes, sir; you told me you had been down to Evansville to see those people.

Q. Now, since I have had no connection with it, has there been anything else done?

A. I do not know.

620 Q. So, with these matters out of the way, the right of way and crossing those two railroads, it would have been easy enough, in your opinion, to have finished the road out to the bluff this summer?

A. Not this summer, no, because, right on this ground you are speaking of, until September, it was covered with water.

Q. Not prior to that time, at what time did the water come in?

A. The water came in there the early part of June, or last May.

Q. From the 25th of March on until the latter part of May it could have been done in there?

A. Yes, it could have been done.

Mr. KOERNER: I understand you to say that from about the first of May until this fall, a good part of this ground was covered with water and was too wet to allow work?

A. There was about three or four months that a part of the ground was impossible to be worked; some of it was so wet in the beginning of the spring that you could not work on it when I first became connected with it; there was a piece on the Chartrand land and also a slough on the McNulty land, that I doubt if it could have been worked at any time after the middle of April.

Mr. THOMAS: These are very short pieces?

A. Yes, sir.

Mr. KOERNER: How was it in the lake at that time?

A. It was too wet for work there until this fall, that was done in the month of September.

Mr. THOMAS: Very little grading was necessary so that you could have laid your track in the bottom, couldn't you?

A. Oh yes, even if there was no grade you could have *paid* it on the surface.

Q. Well, you could have laid the track very easy?

A. Well, there was some three or four feet of water there.

Q. Not on the track?

A. In the summer time in the slough.

Q. Mr. Stevens, you were doing this work for some railroad company? Lately this work was done for some railroad company?

A. Yes, sir.

Q. What railroad company?

A. The Belleville City Railway Company.

The complainants rested.

And thereupon the defendant to sustain the issue upon his part introduced evidence as follows, that is to say:

621 WILLIAM A. REISS, sworn for the defendant, testified as follows:

Direct examination by E. L. THOMAS:

Q. What is your name?
A. W. A. Reiss.
Q. Where do you live?
A. Belleville.
Q. What is your business?
A. Civil engineer.
Q. Do you know anything about the work done on what is known as the Belleville City Railway Company?
A. Yes, sir.
Q. Have you made surveys for that?
A. I made the greater portion of them.
Q. Where did you commence?
A. A line had been run through the bottom, then following up along the short line up to the neighborhood of Ogle's station; afterwards I was employed to run a different line, locating a line from this line parallel with the short line in the bottom up through the bluffs, as it is now located, and I made my survey to connect with the previous line that had been run through the bottom.
Q. Do you know who ran that line?

— ——.

A. Now Mr. Reiss, who was engineer in charge of the work from the Conlogue road to the Grant mine, on the Tilling land?
A. I was.
Q. What was the nature of the work?
A. Of the ground work?
Q. Yes, sir.
A. Well, after leaving the bottom and going through the bluffs it is a very broken country; there are very irregular cross-sections running along the side of hills for about two miles, or a little over two miles.
Q. That is, up to the top of the bluffs, you mean?
A. Up to the top of the bluff.
Q. And from that on?
A. Then, after you cross the summit, the work is very heavy on this side of the summit, east of the summit.
Q. Now, Mr. Reiss, did you cross-section that work?
A. I cross-sectioned it, every bit of it.
Q. What did you do, as to the work, after it was completed?
A. This ground work?
622 Q. Yes, sir; this ground work.
A. I went along after it was graded; I passed over it.
Q. What did you do?
A. Well, I saw that it was put up to the proper grade.
Q. Did you make any measurements?
A. I made all the measurements; certainly.
Q. How was the grading in the bluff after you got to the summit—how was that as to width?

A. Well, I will have to refer to my notes.

Q. Generally, I mean, I do not care particularly.

A. Well, the grading through the bottom and up the bluff to what is known as the Thomas land, the embankments were made twelve feet crown, and the cuts were made eighteen feet wide; after leaving the Thomas land—no, I want to correct that—the grading, the embankments were made twelve feet wide through the bottom to the bluff, and then they widen it to fourteen feet; beyond the Thomas land they were made wide enough for a double track; that is, the greater part of it was.

Q. Now, in your opinion as an engineer, is it possible to get an accurate estimate of the work after it is completed, without having any cross-sections, and from a year or two after it is complete?

A. Oh, we can make an approximate estimate that will vary probably from five to ten per cent. from the true proportions.

Q. Now then you made an estimate of this work?

A. I made an estimate of this work, yes sir, from the actual cross-sections and levels taken.

Q. And at the time the work was done?

A. Before the work was done, I staked it off.

Q. What do you mean by an estimate, you made a calculation?

A. I made a calculation of the work.

Q. Now you have calculated that?

A. Yes, sir.

Q. What amount was there in the old work?

A. What I understand by the old work, there were two contracts, I believe, were there not?

Q. There were two contracts.

A. One running from East St. Louis to the south-east corner of the Thomas land and the other from the Thomas land to Belleville.

A. Well, one of the old contracts running to the south-east corner of the Thomas land, I estimated the work of that from station 0 which is the beginning of the line at the borrow pit beyond Jarrot station near the Cahokia road to Station 373, the south-east
623 corner of the Thomas land was 118,761 and seven-tenths yards; that is a complete estimate without the washing of the ditches from the canal, which is station 230 to station 373.

Q. The ditches were not included?

A. The ditches were not included in that estimate.

Q. The ditches amount to a good many yards, don't they, in the cuts up the bluff?

A. Say for a distance of 140 stations—a station is 100 feet—you could estimate approximately half of that distance for ditches.

Q. That would make several thousand yards more?

A. Yes, sir.

Q. Now I want to ask you another thing, what was the nature of the hauls in the bluff?

A. Some of that ground was moved a great distance.

Q. What do you mean by a great distance?

A. It was moved from 500 to 600 as high as 1,100 and 1,200 feet.

Q. Do you know anything about ditches being cut for the purpose of saving bridges?

A. Yes, sir.

Q. Is there any yardage given for those in that?

A. No, sir, they are not in this estimate.

Q. Now, then, what was the estimate from the south-east corner of the Thomas land to what is the station over there near the coal pit out here on the Tilling land?

A. From Station 373 which was the end of the Thomas land to 539 plus 65, which is the end of the grading as left by Mr. Boling, the amount of grading was 138,045 and three-tenths yards. In addition to that Mr. Boling did grading on what is called Busch avenue in the western limits of this city, amounting to 7,487 and one-tenth yards making a total under the contract of 145,532 and four-tenths yards. Now this estimate included the work that was not done at Ogle's Station at Ehrstein's and Atchison's land, which was subsequently finished.

Q. How much was that work?

A. That work was 7,613 cubic yards; that work, however, is not complete.

Q. Do you know anything about the dirt that could not be taken out on account of not being able to get on the adjoining land there of Emge's? How much does that amount to?

A. This estimate is a calculation of the thing complete.

Q. How much would that be, in your opinion, several thousand yards? That is not taken out there?

A. Yes, sir, I think so; I think probably five or six thousand yards went in there.

624 Q. Now, this calculation that you have made was taken from measurements?

A. From actual field notes taken at the time of staking out the work and cross-sections.

Q. You have cross-sectioned it?

A. Yes, sir, the ground was of such a nature as to require a great many cross-sections.

Q. At some places at what distance did you cross-section?

A. Oh, ten feet.

Q. And some very large fills?

A. Some were very large fills, and there were some very large cuts.

Q. Now, how was that work as to hauling, do you know anything about the question of waste, or anything of that kind?

A. Of grading of the road from the Thomas land this way was done across property where no right of way had been obtained by the company, and one of the conditions of doing that work was that no ground was to be left on the side of the cuts.

Q. Now, how was that in the Schwinn land?

A. There we had to haul the dirt for a thousand or eleven hundred feet, and the same way in the next land, the Phillips land,

there it had to be hauled the same way and the fill ground some of it had to be scattered over the filled, and in the Stookey land, west of town, here some of the hauls there were as much as a thousand feet.

Q. Now, Mr. Reiss, in your calculations is there anything about any road that had to be filled up and fixed and lowerd, or have you simply taken the road, the road-bed only?

A. I have taken the road-bed of the railroad.

Q. Do you know the work that was done at the Phillips road crossing?

A. Yes, sir.

Q. Well was there not very much of it?

A. In my estimate of the work I only figured the railroad property. Any additional work, such as digging out of trenches for culverts, and the digging out of trenches to carry off the water, and the digging down the approaches of highways, are not included in this estimate at all.

Q. There was a whole street block graded in West Belleville that was not included in this estimate, also?

A. Well, this street is.

Q. You have only included the main street there; the side street was graded, also?

A. Yes, sir.

625 Q. Now, in your opinion what is the amount of excavation work that was done now that *that* is not included in this number of yards?

A. From 6,000 to 8,000 yards. I have not the figures of that with me; I never made a complete estimate of that work.

Q. That is your opinion from your knowledge of the work?

A. From my knowledge of the work, yes, sir.

Q. What is the total of all that you have in your estimate from actual measurements?

A. 264,294 and one-tenth yards.

C. F. STEVENS, recalled for defendant, testified:

Mr. THOMAS: In your estimate here of the yardage you did not take any estimate of this street in West End?

A. No, sir.

W. A. REISS (continued):

Q. Now, Mr. Reiss, from what you know of the work, what do you say as to the price charged, eighteen cents for cuts and fills without haul on this part, from the Thomas land this way?

A. I think, if anything, it was a little low, considering the long haulage. The contract was let this spring at eleven cents, with a haulage; and, according to that, some of this work ought to have brought twenty-two cents.

Q. What do you think of the price that was paid for the 118,000 yards, without haulage or anything of the kind?

A. Thirteen cents a yard, that was the price of that. That con-

tract was let three years ago this fall. I think it was a price that was customary at that time; perhaps a little lower than the general price.

Q. That contract provided for a haulage, did it?

A. That contract provided for a haulage, but I think there was no estimate made of the haulage.

Q. Not in this 118,000 yards?

A. No, sir. I never saw the contract, but I understand that was the nature of the contract.

Cross-examination by Mr. KOERNER:

Q. Do I understand you to say eighteen cents for excavation and embankments?

A. Yes, sir, both ways.

Q. Both ways?

A. Yes, sir.

Q. That you say is the general price?

A. Considering all the circumstances in connection with it; as a general thing contractors are paid for the ground work at the
626 end of the month, that is when the contractor gets his pay; in this work the contractor had to run his chances of getting his pay.

Q. Now, what would the ordinary price have been if these peculiar circumstances had not been so unfortunate?

A. Probably three or four cents less.

Q. So that would be taking into consideration that the contractor probably would not be paid?

A. Judging from the way that ground is done here, why that price was a fair price.

Q. You mean eighteen cents?

A. Yes, sir, under the circumstances.

Q. Now, on this 264,258 yards, I understand that seven thousand yards more work was done besides?

A. No, sir, that seven thousand yards, that is concluded in that work, that was done out on Busch avenue.

Q. I understood you to say, a while ago, that there were seven or eight thousand yards extra work that was done?

A. Yes, sir, that was in ditches and cutting down the highway approaches.

Q. Where are these ditches that you speak of?

A. There is a ditch that we cut into the bluffs probably a half mile long from the so-called nigger cabin to the Brouilette creek.

Q. Is not that dirt put into the embankment that was taken out of that ditch.

A. Some of it was.

Q. Was not all of it?

A. No, sir.

Q. Was that not intended for a borrow pit?

A. No, sir, we had plenty of dirt there without making a borrow pit.

Mr. THOMAS: You had to waste the other then?

A. We had plenty of work in the embankment there, or in the excavation there, to make the fills.

Q. On March 30, you made an estimate and presented it of the work you had done from station 415 to station 402, amounting to 7,613 yards did you not.

A. From 402 to 415, 7,613 yards.

Q. Was that correct?

A. That was correct, yes, sir, except that that is taken as being complete.

Q. What was the width of the road bed along there?

A. Twenty-two feet.

Q. What was the slope where this work was done?

627 A. Well, I cannot tell you that by memory—it is twenty-four feet wide.

Q. You say the measurement of this work was 7,613 yards, and Mr. Stevens says 5,280, what do you say to that?

A. I do not know.

Q. Is he right or wrong?

A. I do not know; it runs from station 402 to station 415, plus 54; that is 1,345 feet long. I can give you my measurements if you want it.

Q. What experience have you had in the railroad service?

A. I have been connected with the Belleville and St. Louis Railroad for three years, and have been connected with the Atchison, Topeka and Sante Fé Railroad for one year doing office work, the principal work being the calculation of ground work, earth work.

Q. Did you do any field work?

A. Yes, sir, I did field work. I was connected with the Valley and Council Grove Railroad for eight months.

Q. Where is that?

A. In Kansas.

Q. What was your connection with the road?

A. As engineer, levelling engineer.

Mr. THOMAS: That is work very similar to this.

A. The leveling engineer has charge of the earth work of railroading.

LUCIEN M. CHIPLEY, sworn for the defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Lucien M. Chipley.
Q. Where do you live?
A. St. Louis, Missouri.
Q. What is your business?
A. Promoter, financial agent and real estate.
Q. Do you know Samuel H. Leathe?
A. Yes, sir.
Q. Do you know Edward L. Thomas?
A. Yes, sir.
Q. Bart S. Adams?

A. Yes, sir.

628 Q. Well, now, I will ask you to look at this instrument?

(Handing witness the contract of January 24, 1893.)

A. Yes, sir.

Q. When were the names of Edward L. Thomas and Bart S. Adams signed to that instrument?

A. On the 24th day of January, 1893.

Q. When were the names of Samuel H. Leathe and Lucien M. Chipley signed to that instrument?

A. Either on the 27th day of June or July.

Q. In what year?

A. 1893.

Q. When this instrument was signed by Thomas and Adams, what was said and done, of course the substance of it, as to signatures?

A. Mr. Leathe declined to sign it at that time; he wanted to take it under consideration and he took the paper with him.

Q. When did you next see the paper?

A. When I signed it at his house on the 27th of June, or 27th day of July.

Q. What was said at that time?

A. We were examining a number of papers of the Thomas and Adams papers. There were more than this. He had the happy faculty of any paper getting into his possession, if he got it into his hands once he would lock it up, and it would never be seen unless he was forced to produce them. This paper was among the rest; after looking over a number of papers he produced this and said "we might as well sign that contract;" and he signed it and handed it to me to sign, and afterwards said to me, "now, we do not want to remember the date of signing this contract at all."

Q. I will ask you whether or not the contract was ever in force?

A. Never.

(Objected to.)

Q. What did you hear between the parties to it in regard to the contract?

A. That is between yourself and Mr. Leathe?

Q. And you and Mr. Adams, anybody else that was present?

A. Mr. Leathe declined to go into this enterprise after investigating the matters unless you procured the Belleville City Railway charter for the railway, and you wanted Mr. Leathe and myself to join in giving our pro rate stock which would be necessary to pay Mr. Charles W. Thomas for the charter of the Belleville City Railway, and he and I both declined to give up a share of stock, and he declined to enter into this contract at all.

629 Q. Who do you mean?

A. Samuel H. Leathe.

Q. Did he so state that to anybody?

A. Undoubtedly he stated that to me and stated that to you.

Q. Was that before, or after the contract of March 25th?

A. That he declined.
Q. Yes, sir.
A. That was prior to the making of the contract of March 25th.
Q. After the delivery of this contract to him signed by both Thomas and Adams, state what did Mr. Leathe do as regards these things spoken of here?
A. Well, he had decided not entering into this enterprise.
Q. Was any action ever taken under that contract by Mr. Leathe?
A. Not that I know of.
Q. Was there or was there not and different arrangement made after this date?
A. Yes, sir.
Q. When was that?
A. That was at a meeting when the Belleville City Railway charter was taken, and the property which was acquired by Mr. Leathe, which he had purchased in his own name, was turned over and stock issued to him.
Q. In what company?
A. In the Belleville City Railway Company.
Q. When was that as to the time Mr. Leathe signed this, before or after?
A. Well it was a long time prior to the signing of this.
Q. How long prior to the time of the signing of it by Leathe? —it was after the date of it.
A. Yes, sir, it was after the date of it, but long prior to the signing by Mr. Leathe and myself.

Cross-examination by Mr. KOERNER:

Q. Mr. Chipley, this paper signed by Mr. Adams and Mr. Thomas, what did they do with it, what did they do with this paper.
A. It was turned over to Mr. Leathe.
Q. And he has had it in his possession ever since?
A. As far as I know, yes, sir.
630 Q. Mr. Leathe, I understood you to say, proceeded to purchase land for right of way and terminals and so forth, did he not?
A. Yes, sir.
Q. Immediately after the execution of this paper, shortly after?
A. I think prior.
Q. To the execution of the document by Thomas and Adams?
A. Yes, sir, I think he purchased some prior to that, I am not positive of that, but he purchased some afterwards.
Q. Along in February and March?
A. I think so, some in February and March, yes, sir.
Q. What kind of property was that?
A. Well, that was coal land, and rights of way and this Snyder lot on the river front.
Q. Under this contract there was to be some stock assigned to you, was there not?
A. Under this agreement?
Q. Yes, sir.

A. Yes, sir.

Q. In what company?

A. That proposed here in the Belleville & St. Louis Railway Company.

Q. And it mentioned the other companies that might be formed, that you know of?

A. The same proportion, yes, sir.

Q. How much stock is that that should be assigned to you?

A. In the railway company?

Q. Yes.

A. $78,300 worth of stock.

Q. And the same proportion in the above companies?

A. Yes, sir.

Q. What other companies were meant in which that would apply?

A. In the Crown Coal Company.

Q. I will ask you whether subsequent to this there was $78,300 of the capital stock assigned to you?

A. What time do you refer to?

Q. At any time subsequent to the signing of this contract?

A. By Mr. Leathe and myself?

Q. No, sir, prior to the time you signed it?

A. No, sir.

Q. There never has been that stock assigned to you?

A. No, sir, not in the Belleville & St. Louis Railroad Company. No, sir.

631 Q. Well, in the other, in the Belleville City Railway Company?

A. Yes, sir.

Q. What amount?

A. $78,300.

Q. Was there stock assigned to you in the Crown Coal Company?

A. Yes, sir.

Q. In what amount?

A. 313 and one-fifth shares.

Q. Is that the same proportion?

A. That is, two-fifths; yes, sir.

Q. Do those shares still stand in your name?

A. Yes, sir, so far as I know, unless they have erased them: the books are in their possession, and you cannot tell what they are doing.

Q. You have not assigned them to anybody?

A. No, sir.

Q. You say, afterwards there was another arrangement made?

A. Yes, sir.

Q. That is the agreement that is spread upon the records of the Belleville City Railway Company?

A. Yes, sir.

Q. That refers to a subsequent arrangement?

A. Yes, sir.

Q. Now, then, why was there assigned to you $78,300 of the

capital stock of the Belleville and St. Louis Railway Company?
A. As promotor.
Q. You can explain to this court what that means?
A. A promotor is a man who has got the ability and confidence to get men with money and get them to put it into an enterprise, and back it up with their wealth; Holmes and Koerner could not do that if they tried; Holmes told me himself he tried it for four years.
Q. Was there the same consideration for your stock in the Crown Coal Company?
A. Yes, sir. It was originally intended to make one corporation out of the Coal Company and the railroad, and the laws of your state over here would not permit it, and so we organized two companies.

Re-examination by Mr. THOMAS:

Q. I understood you to say that you never owned any Belleville and St. Louis Railway Company stock?
A. I never owned a share of it, sir.

632 BARTLETT S. ADAMS, sworn for the defendant, testified as follows:

Direct examination by E. L. THOMAS:

Q. What is your name?
A. Bartlett S. Adams.
Q. Where do you live?
A. St. Louis.
Q. Are you the Bart S. Adams mentioned in this instrument? (Showing witness the contract of January 24, 1893.)
A. That is my name signed there.
Q. Who signed it?
A. I did.
Q. When did you sign that, what were the circumstances?
A. I signed it the same time you did.
Q. What was done with the paper, then?
A. Why, you either turned it over to Mr. Chipley, and he turned it over to Mr. Leathe, or you turned it over to Mr. Leathe directly, I don't remember which.
Q. Was Mr. Leathe there present?
A. Yes, sir.
Q. What was done there? Did he, or did he not, sign it at that time?
A. He did not sign it there.
Q. What did he do with it?
A. He took it home.
Q. I want to know whether or not you ever heard him mention the contract in your presence?
A. Well, I know that it was mentioned that day.
Q. Was it mentioned at any other time? Did you ever hear

anybody ask him whether he had signed it or intended to do it, or what?

A. I am not positive, but I believe you asked him if he had ever signed it?

Q. What did he say to that?

A. He had not.

Q. Did you ever hear him saying anything in regards to not executing that contract, that he wanted the Belleville City Railway charter?

A. I did not hear Mr. Leathe, but I heard Mr. Chipley say that he had to have the charter of the Belleville City Railway.

633 Q. Was that in the presence of Mr. Leathe?

A. I am not positive.

Q. But you know as to whether that was signed?

A. It was signed.

Cross-examination by Mr. KOERNER:

Q. Mr. Adams, you are a son of Captain W. A. Adams?

A. Yes, sir.

Q. Do you know that your father interested himself in this enterprise, during his life-time?

A. Yes, sir.

Q. Do you know that he advanced some money towards it?

A. Yes, sir.

Q. That money is still in the enterprise, is it?

A. Yes, sir.

Q. Do you know how much he invested in it?

A. Between twenty and twenty-five thousand dollars.

Q. Did he purchase any lands or right of way in connection with it?

A. Yes, sir.

Q. He took them in his own name, didn't he?

A. Yes, sir.

Mr. THOMAS: That was the land, not the right of way?

A. No, sir.

Mr. KOERNER: After he died you conveyed it to the Company?

Mr. THOMAS: To me.

Mr. KOERNER: He took deeds to it in his own name?

A. To some of them, because we gave the deeds to them afterwards.

Mr. THOMAS: That was lands, but not right of way?

A. I don't know about the right of way.

Q. And after he died the deeds were made out to the Company?

Mr. THOMAS: To me that was.

A. Yes, sir.

Mr. KOERNER: The deeds he took in his own name?

A. He bought some lands, now I don't know whether it was right of way or what it was.

Q. He held the title to it, and afterwards you conveyed it to the Company?

A. To the Company or Mr. Thomas, I don't know which.

Q. Now, are you acquainted with the terms of this contract, Mr. Adams?

634 A. Well, I was at the time; I don't know whether I remember them now.

Q. Do you remember that feature of it which states that Mr. Thomas and Adams were to be paid after the money which was needed for the completion of the road had been obtained on bonds?

(Objected to.)

A. Yes, sir.

Q. How was that?

A. Mr. Thomas and myself and Mr. Taylor had different amounts in the Company, and Mr. Leathe was to put the money into the thing—into the Company—and carry it through, and bonds were to be sold then, and Mr. Leathe was to receive his money, and then Mr. Thomas and myself were to receive ours.

Q. And when the Companies were formed a certain amount of stock was to be asigned to you? Do you know how much that was?

A. No, I had stock in the old original company.

Q. Now, was not the stock assigned to you in accordance with the amount fixed by this contract?

A. I had some stock assigned to me?

Mr. THOMAS: In the Belleville & St. Louis Railway Company?

A. I had some in the Belleville & St. Louis Railway Company.

Mr. KOERNER: You turned in the stock to Mr. Leathe, in accordance with this contract, did you not?

A. I turned in the stock to him, yes, sir, and some of the bonds.

Q. And they assigned to you Fifty Thousand Dollars of the stock?

A. I do not know; I could not tell you; it was two-fifths.

Q. Mr. Adams, you were well aware that the outlay which your father had made for the old company was to be paid only after the completion of the road, and after the money expended by Mr. Leathe for the completion of the road had been paid to him, was it not?

A. Well, after that Mr. Leathe and Mr. Thomas and myself were together and made a new arrangement about what was to be done; Mr. Thomas and father had other arrangements that I did not know anything about.

Q. I mean the arrangements in this contract that provided——

A. That he was to get his money back, yes, sir.

Q. After Mr. Leathe got his money back for the completion of the road?

A. After he got back what he put in.

635 Q. Was there ever any change in that understanding?

A. Not that I know of, only that we did not get the money back.

Mr. THOMAS: Did you not hear Mr. Leathe refuse to go into that contract?

A. I know he entered into a contract with the Belleville City Railway afterwards.

Q. Don't you know that Mr. Leathe refused to enter into this contract?

A. Well, I know this paper was drawn up, but I do not know when he signed it.

Q. You know that up to the last time you heard of it, he refused to sign it?

A. Yes, sir.

Q. You don't know whether he ever did sign it or not?

A. No, sir; I don't know that.

Q. This arrangement made on the 25th day of March was entirely outside of this contract?

A. Yes, sir.

Mr. KOERNER: The only trouble that you speak of, Mr. Leathe and Mr. Chipley wanted to use the charter of the Belleville City Railway Company, instead of the Belleville & St. Louis Railway Company, was it not?

A. They wanted the charter that the other railroad had.

Q. He wanted that for the purpose of constructing this road, was it not?

A. I don't know whether it was the same old railroad company or not.

Q. Well, it was the same company, the road, was it not?

A. Well, I don't know whether it was the same old company; it was the same one after we started in on the new deal, yes, sir.

Q. There was only one railroad to be built, and that was from Belleville to East St. Louis, was it not? Whether it was under the name of the Belleville & St. Louis Railway or the Belleville City Railway, that did not matter?

A. I don't know whether it did or not.

Q. You did not care anything about that, did you?

A. No; I did not care what kind of a name it had, as long as it was built.

Q. The coal enterprise was one which was increased after Mr. Leathe went into the arrangement and was to be an adjunct and part of the railroad, a part of the enterprise, was it not?

A. Well, it was owned by the same stockholders.

Mr. THOMAS: Mr. Adams, don't you know that objections
636 were made to purchasing the charter of the Belleville City Railway Company?

A. Well, I understand that you did not want to get it.

Q. At the time you turned over this stock and bonds to Mr. Leathe, it was supposed that he was going to execute this contract of January 24th?

A. Yes, sir.

CHARLES W. THOMAS, sworn for defendant, testified as follows:

Direct examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Charles W. Thomas.
Q. Where do you live?
A. In the city of Belleville, County of St. Clair, Illinois.
Q. What is your business?
A. I am a lawyer, that is, I am practicing law.
Q. When did you first become acquainted with Mr. Leathe?
A. Some time the latter part of February or the first of March, 1893.
Q. What was the cause of that?
A. I was invited to go to the office of Mr. Chipley, who seemed to be acting as the financial agent of Mr. Leathe, the object of the invitation was to discuss the question of using the charter of the Belleville City Railway which I owned or a vast majority of the stock; that was the occasion of my going there.
Q. Well, what became of that discussion?
A. It was either during the last days of February or the first of March that I went over at your request to have an interview with these gentlemen and I informed them of the provisions of the charter, and what had been done to preserve it. Mr. Chipley and Mr. Leathe were present and yourself and myself, and part of the time probably in the presence of Mr. Adams and Mr. Taylor, but they seemed not very much interested in the matter. Mr. Chipley did most of the talking about the matter, and we discussed the terms upon which I would consent to part with my stock in that company and the details of some plans that might be arranged whereby that charter could be used to build a railroad. I told these gentlemen, I would not part with my stock unless the amount to be expended in it at the time was paid up in good faith and for value. And Mr. Leathe and Mr. Chipley agreed that would be done and I set about to devise a plan whereby that might be effected and explained
637 the plans in the presence of Mr. Leathe and Mr. Chipley. At the time I went there this contract which you have in evidence, was shown to me by Mr. Leathe and Mr. Chipley as well as a detailed list of the indebtedness of the Belleville & St. Louis Railroad Company, which was in their possession; I looked at both of these instruments and saw that they were executed by Edward L. Thomas and Bart S. Adams, and I informed Mr. Chipley that that contract could not in the nature of things be used; if the other charter were to be used, other parties having intervened and other circumstances, that would make this contract impractical. This was agreed to by Mr. Leathe and Mr. Chipley both. We then after a great deal of talking—my recollection now is that I made one or two written memoranda of plans that might be devised to which objections were found by Mr. Leathe himself and I thought well founded; and at length in the course of the negotiations this agreement was arranged which appears in the record of the minutes of the Belleville City Railway Company.

Q. That was the 25th day of March, 1893?

A. Yes, sir. Mr. Leathe was to pay his stock, as I explained to him prior to the whole arrangement, by the purchase of the river front and the necessary right of way, and was to get the Belleville and St. Louis Railway, and turn over that property in part payment of his stock, and was to further agree to build the road and float the bond that was to protect it from foreclosure for one year, and that was to be considered full payment for all the stock but five shares. This was all carried out afterwards, and the contract was placed on the minutes of the Belleville City Railway Company.

Q. Has this contract of January 24th anything to do with the present parties?

A. No, sir, it could not have any connection with it; it is impossible of execution.

Mr. KOERNER: Do you say it is impossible?

A. It seems to me so from the mere statement; that is what I think about it. I never received a share of the Belleville and St. Louis Railway stock, and never considered it at all.

Q. Well, was there anything said as to whether this contract was to govern or not?

A. It was positively stated by Mr. Chipley and Mr. Leathe that that contract had no application to the enterprise. It was explained by me fully to him, and he assented to it. I am not positive, but it seems to me in April, I heard Mr. Leathe say in conversation with you that the contract had never been signed.

638 Cross-examination by Mr. KOERNER:

Q. You had no shares of stock in the Belleville and St. Louis Railway Company?

A. No, sir; no interest whatever.

Q. What you were doing there was to sell your charter of the Belleville City Railway?

A. Yes, sir.

Q. And you were to obtain for that a certain portion of the stock and bonds?

A. No bonds, no, sir; but stock.

Q. Also in the coal enterprise?

A. Yes, sir. There was a coal enterprise, the Crown Coal Company, as heretofore stated and reorganized; that is, the capital stock was increased; and the same proceeding was gone through with that company that was gone through with the Belleville City Railway Company with respect to the payment of the stock, Mr. Leathe purchasing all the ground of the Crown Coal Company in payment of his stock, just as he did in the Belleville City Railway Company.

Q. As far as you were concerned you got certain shares of the capital stock in both companies?

A. Yes, sir.

Q. What was your connection with the enterprise?

A. That is as far as I was interested in it, yes, sir.

Q. The object of this meeting was to devise some means by which the charter of the Belleville City Railway Company could be utilized

to construct and operate a railroad which had then been partly built by Mr. Thomas?

A. That was not the object of the meeting at all. The charter of the Belleville City Railway Company contemplated a much larger enterprise, a very much larger one than Mr. Thomas was able to handle under his charter, and in fact Mr. Leathe went so far with the Belleville City Railway Company as to obtain material for a portion of the road that never could have been constructed under the Belleville & St. Louis Railway Company charter.

Q. It was supposed that the Belleville City Railway charter presented more advantages than the old charter?

A. That was the understanding, yes, sir.

Q. And for that reason they wanted it, and you had that charter for sale?

A. Mr. Leathe said he would not go into the enterprise unless that charter was put in.

Q. But Mr. Leathe did not propose to pay anything for it himself?

639 A. He insisted that Mr. Thomas surrender his stock, which he did; this same stock that I got in the Belleville City Railway and the Crown Coal Company he had to surrender; Mr. Thomas had to surrender that from the amount that it was originally intended he should have under the old arrangement.

The COURT: Mr. Thomas, I will ask you, in this arrangement, what was to become of the Belleville & St. Louis Railway Company?

A. Mr. Leathe was to buy that property in consideration of the payment of its debts and was to turn it over in payment of his stock, which he did; he deeded it to the Belleville City Railway Company.

Mr. KNISPEL: And paid up his shares?

A. He paid up his shares; he took the stock, subject to a levy of one hundred per cent. which had already been made, which was the only way he could pay by giving value, by turning in the property of the Belleville & St. Louis Railroad, the Snyder lot, and agree to build the road, float the bonds and to protect it from mortgage for one year; that is the consideration he gave in payment of his stock.

Q. Did you draw this paper and sign it?

(Handing witness a paper.)

In case Edward L. Thomas makes an arrangement and contract with Samuel H. Leathe and his associates to construct the railroad of the Belleville and St. Louis Railway Company upon such terms as he may agree upon, I will assign to the said Edward L. Thomas 490 shares of the capital stock of the Belleville City Railway Company, to 483 shares of which I have now the legal and equitable title and to 7 shares of which I have an equitable title, the same being subject to my order. I will also endeavor to procure, and have no doubt I can procure, the seven shares now held by Edward Abend and Henry Abend, all of which I will assign with the said 483 shares. In return for said stock said Edward L. Thomas is to assign to me $25,000 of his stock in said Belleville and St. Louis Railway Company, and I am to receive one-twentieth of all profits to be derived

from it and all enterprises undertaken in connection with it in which said Edward L. Thomas participates.

CHARLES W. THOMAS.

February 17, 1893.

A. I signed this, yes, sir.
Q. That is your handwriting?
A. Yes, sir. That was not carried out; that was one of the various memoranda I made during the progress of the negotiations; I think there are three or four of them. That was not carried out. Mr. Leathe assigned me the stock.

640 BISSEL THOMAS, sworn for the defendant, testified as follows:

Direct Examination by Mr. E. L. THOMAS:

Q. What is your name?
A. Bissel Thomas.
Q. Where do you live?
A. Belleville.
Q. What is your business?
A. Practicing law.
Q. Are you acquainted with Mr. Leathe?
A. Yes, sir, I know Mr. Leathe.
Q. Were you present at any time when any conversation took place between Mr. Leathe and Edward L. Thomas?
A. Yes, sir, I was present several times. The first time that I can recall that I met Mr. Leathe and was formally introduced to him was in Mr. Needles' office about the first of February or perhaps a little later, some time the fore part of February or latter part of January, Mr. Leathe and Mr. Chipley came into Mr. Needles' office with you, and you spoke about the affair of the Belleville and St. Louis Railway Company.
Q. Now, then, what was said there as to this contract?
A. I remember you asked Mr. Leathe if that contract had been executed yet, and he said it had not, that he was still considering it, and you seemed rather urgent in your insisting that he should sign it immediately, executing it; you said it had been delayed some time then; I forget what else, but you seemed annoyed at its not having been signed before that time, you insisting that he should sign it and that it be entered into formally.
Q. Do you remember any negotiations that were going on then about land that will direct your attention to the time?
A. Yes, sir. Dr. Kohl was engaged in purchasing the Snyder lot about that time, or had purchased it; at any rate, you were discussing the matter at that time.
Mr. KOERNER: Dr. Kohl was selling it, you mean?
A. Dr. Kohl was buying it for Mr. Leathe as I understood it.

641 EDWARD L. THOMAS, sworn for the defendant, testified as follows:

My name is Edward L. Thomas; I live in the City of Belleville, and have been a lawyer; I will begin with the negotiations with Mr. Leathe; in the early part of January, 1893, perhaps in the latter part of December, 1892, I commenced negotiations with Mr. Leathe in regard to taking hold of the Belleville & St. Louis Railway, which culminated in the making of this instrument signed by Mr. Adams and myself. After it was signed by Mr. Adams and myself, on the day it bears date, I handed it to Mr. Leathe and asked him to sign it. He took it and declined to sign it at that time, and said he wanted to further consider it. He did not sign it at that time, neither did Mr. Chipley. From then on, from time to time, until about the first of March, or perhaps a little later, I urged him a number of times to execute this contract, asking him if he had executed it; he always saying that he had not, and always giving some excuse in regard to it, up to the first of March, or about that time, when he expressed his determination not to enter into it. After it was signed by Mr. Adams and myself Mr. Leathe purchased the property that he has introduced the deeds for, from Mrs. Snyder, and the coal rights, and took the title in his own name upon my statement to him, as he had not signed this contract, that that would probably be the best way, he telling me that he had not, but probably would, and the transfers could be made afterwards. Mr. Leathe never demanded any stock in the Belleville & St. Louis Railway Company, and never owned any. He took up under this instrument the stock owned by Mr. Adams, but took a note from Mr. Adams, so he informed me, and when he took up my stock he took up a note also from me.

About the first of March, or along that time, Mr. Chipley and Mr. Leathe—we were meeting them nearly every day—by some means got knowledge of the Belleville City Railway charter, and after an examination by them, they determined that they must have that charter. I objected to purchasing that charter, objected continuously to purchasing it. Finally they insisted that it should be purchased, and then I went to Mr. Charles W. Thomas and negotiated with him for the purchase of it, and insisted that Mr. Chipley and Mr. Leathe, and those interested, should surrender their proportionate share of the stock necessary to purchase the charter; that Mr. Chipley and Mr. Leathe declined to do so; so I then insisted that Mr. Chipley and Mr. Leathe execute the contract of January 24th; Mr. Leathe declined to execute it, and told me he

642 would not go into the enterprise at all unless under the Belleville City Railway charter, and unless I would purchase that why he would not be in it, and I then negotiated with Mr. Charles W. Thomas about the purchase of the charter of the Belleville City Railway Company.

About the middle of March after an arrangement had been made with Charles W. Thomas, Mr. Leathe, Mr. Chipley, myself and Mr. Charles W. Thomas met in the office of Mr. Chipley in the city of St. Louis. Mr. Charles W. Thomas there spoke of this contract

and distinctly told Mr. Leathe that it had no application to the parties that were interested in the Belleville City Railway charter, and that it would have to be outside of that, he had no interest in it and that a new contract would have to be entered into, to which Mr. Leathe assented, there stating that he had not executed this contract. Mr. Leathe from that time on acted entirely under the Belleville City Railway charter. On the 25th day of March a new contract was entered into. Prior to the entering into the new contract he stated distinctly and expressly that the old contract was not in force and at no time until Mr. Leathe commenced the litigation in regard to this railroad did he ever claim to me that he had executed this contract or even told me that he had executed it. After the middle of March this contract was never spoken of or mentioned, and I never paid any attention to it until the 22d day of August, 1893; then he told me he had signed that contract. I told him he must have signed it after the contract of March 25th, and he made no reply to that and I did not know whether he had signed it or not.

Q. What was he to do for his stock, for his part of it?

A. He was to pay for his stock by the property he took from the Belleville & St. Louis Railway Company and the deeds.

Mr. KNISPEL: The deed recites for a consideration of one dollar and other valuable consideration moving from him to the company.

Mr. ROPIEQUET: What were the valuable considerations?

A. That he was to buy the indebtedness of the company. At that time this statement was mentioned; that statement set out the indebtedness; there was part of the grading estimated but not done.

Mr. KNISPEL: This subsequent contract of March 25th, that is the contract that is contained in the minutes of the Belleville City Railway?

A. Yes, sir, that is the contract.

Q. Now, this estimate, was that ever submitted to Mr. Leathe to your knowledge, had he any knowledge of it?

643 A. That was submitted to him; yes, sir. This is a copy of the account introduced by Mr. Koerner. That was submitted to him, yes, sir. That was submitted to him on the twelfth of January, and he had it all the time. He made a full examination of this; he had Mr. Stevens make an examination of this matter so far as an engineer's business went.

Q. Mr. Leathe did?

A. Mr. Leathe did; some weeks prior to any of these contracts.

Q. At the time this arrangement was made by paying the debts did he then have any knowledge of this?

A. Certainly; this account was referred to in this letter.

Q. Did Mr. Leathe ever object to any of these items?

A. Not to me.

Q. At any time before the litigation?

A. He has never to me at all, at any time; this eighteen cents a yard for both cuts and fills was all fully explained to him.

Q. Was there any objection made to that charge?

A. Not at that time, no, sir, not ever to me; I never knew that

he made any at all. The first that I heard that he had objected to was here lately, not about those items, but smaller items, perhaps.

Q. Had that work been done by contract?

A. The first contract ran up to the south-east corner of what is called the Thomas farm, that had been done under contract by Mr. Boling and myself with Capt. Adams; Capt. Adams had several bids, one of them, the lowest, was for 13 and 100 feet haul, and we entered into a contract with him for that price.

Q. That was for excavation?

A. Yes, sir. There was another outside party bidding on it.

Q. You were the lowest bidder?

A. No, we were not either the lowest or the highest bidders; the lowest bid was thirteen cents, and Captain Adams, in view of the fact that he did not have the funds regularly along, wanted to have somebody have it who was interested in the enterprise and who would not press him for funds.

Q. What was it let out at?

A. At thirteen cents, with a hundred feet haul, but we never had any haulage and never claimed any.

Q. Whatever haulage there was you never made any charge for it?

A. No, sir; the haulage should have been paid, but the way it was carried on was such that those matters were not separately looked after, and it would be impossible to fix it. Some of the haulage, on some there was no haulage; the season was very dry, and we took it right out of the bottom of the lake there.

644 Q. Didn't we have two or three successive dry seasons?

A. Yes, sir; we had several dry seasons; in the fall of 1890 the lake was very near dry, and we took it right out of the bottom of the lake. Some of it we had to haul all the way from the borrow pit, 600, 700, 800 feet; we did not have much funds to do the work with; we went along with it easily, and did not want any more money than just enough to pay the running expenses.

Cross-examination by Mr. KOERNER:

Q. How long have you been at work on this enterprise, Mr. Thomas?

A. Since March, 1889.

Q. Did you ever have anybody engaged to interest people in this enterprise?

A. Not prior to the death of Capt. Adams; since that time.

Q. Since that time?

A. Yes, sir.

Q. Did you have any one engaged to see Mr. Leathe about the matter?

A. No, sir, excepting I was told by Capt. Adams that he had a party, and Capt. Adams took me to Mr. Chipley and here I met Mr. Leathe. I first thought that Mr. Chipley was acting for me, but I afterwards found that he was acting for Mr. Leathe.

Q. Before you found Mr. Leathe you had been negotiating with other parties?

A. Yes, sir, a number of them. I gave up my law practice on the

first of January, 1890, and devoted my time to this matter exclusively.

Q. You were trying to get somebody to help build this road?

A. Certainly, all the time. All my time.

Q. You wrote a letter to Mr. Leathe?

A. I wrote a letter.

Q. You had met him before?

A. That was after I had met him; I am not positive, but I think I had met him perhaps two weeks before.

Q. This letter was written on the 12th day of January?

A. Yes, sir.

Q. And this contract of January 24th was your idea of what ought to have been done?

A. That was my idea at that time. I will state here that I should like to abide by it if I could; I should have preferred it to any other contract and would do it to-day if I could do it.

Q. You are willing to abide by it to-day?

A. If I could, yes, sir; it is impossible to do it; I had a con-
645 tract with him and that provides for it, for the purchase of my coal for $16,000; that letter is made a part of the contract, it is referred to by the contract, and made a part of it.

Q. What was the enterprise, Mr. Thomas, what were you trying to interest Mr. Leathe in?

A. To build a railroad from East St. Louis to Belleville, but the particular thing was to get to the coal fields and get the coal, that was the particular thing to get the coal to the river and use it for coaling boats.

Q. That was the scheme you wanted to interest him in?

A. Yes, sir, that is what I wanted to interest him in.

Q. You say in this contract of January 24th that he was to advance the money to take up four bonds held by Mrs. Johnson—$4,000 with interest and $750 on the First National Bank with interest; did he do that?

A. He did.

Q. When.

A. About the first of February, or perhaps very soon after Mr. Adams and I signed the contract.

Q. How many bonds were there, do you know?

A. Mrs. Johnson had two bonds and two bonds were pledged as collateral for this note on the Third National Bank.

Q. You agreed to place $150,000 of bonds in his possession?

A. They were to be placed in his possession so they could be canceled, that was the idea of it.

Q. Well, he got possession of the bonds?

A. Yes, sir. He got possession of eight thousand that I had, that I gave him expecting him to enter into this contract, and he got $90,000 from the First National Bank of Belleville; he got into possession of them by entering into a contract with that bank.

Q. He had to enter into a contract to get them?

A. He entered into a contract to return them new bonds or pay the money or bring the old ones back.

Q. Now, Mr. Thomas, do you know Mr. Leathe after the execution of this contract, doing anything towards forwarding the railroad enterprise?

A. He did, he purchased the Snyder lot and took it in his own name for reasons that I have before stated; he purchased those coal properties that I have contracts for.

Q. Who did the proposition come from in the first place to take hold of this Belleville City Railway charter?

A. Mr. Chipley.

Q. It was supposed to possess some superior qualities to your charter?

646 A. I did not think it did and therefore objected to it all the time, but Mr. Leathe said he would not go into the enterprise at all unless he got that charter.

Q. He had entered into it?

A. He had taken everything in his own name; he had not taken anything at all in the name of the company.

Q. He had put up a great deal of money, hadn't he?

A. He had put up a good deal of money.

Q. And was of no count except to this railroad, was it?

A. Well, if Mr. Chipley was here he could tell you how that was; I only know from him. Of course, I could not tell what was his intention except by hearsay from Mr. Chipley.

Q. This two or three thousand dollars here that was put up?

A. That was put up.

Q. Nobody paid him back, did there?

A. He got our notes for it and that was not in accordance with the contract. The contract did not provide that we should give him our notes; he did not advance it to the parties.

Q. Was it not your duty under the contract to deliver to him those bonds?

A. Yes, sir, but it was not my duty——

Q. He was compelled to put up the cash to get them?

A. Yes, sir, and he took our notes for it.

Q. Now after you delivered this to him were you not to assign him the stock in the Belleville & St. Louis Railway Company?

A. Certainly.

Q. Did you not make an effort to put him in possession of the stock?

A. I did at the time, yes, sir, assuming that he was going to enter into this contract, certainly.

Q. Why did you not put him in possession?

A. Because at that time it was in the hands of Mr. Stoddard of the Third National Bank on a certain contract that I had with Mr. Gould and Mr. Kent, and Mr. Gould was absent from the city, and he had the contract before delivering up the stock. That was all there is of it. I want to state I gave Mr. Leathe the receipt from Mr. Stoddard so he could get it and he had it for some time and when the contract was entered into, on the 25th of March, he returned the receipt and I have the receipt here now; this is the receipt I gave to Mr. Leathe and he had it in his possession for a day or two and

went with me to Mr. Stoddard's to get the stock and gave it back to me afterwards again, but Mr. Stoddard refused to deliver the stock to him.

Q. You say Mr. Leathe had that receipt?

A. He had it, yes, sir; he had it and returned it to me.

647 Q. Now, the stock in this new company was apportioned as provided in this contract?

A. It was apportioned in the same way, but not under the provisions of the contract.

Q. According to the same amount of shares that the respective parties were to have in the Belleville and St. Louis Railway Company?

A. The capital stock of the Belleville City Railway Company had to be raised to $500,000 and was divided between Mr. Leathe, Mr. Chipley and Mr. Charles W. Thomas——

Q. We are not talking about that matter. Then the stock was distributed by you——

A. It was assigned on the books by Mr. Leathe; I had nothing to do with it.

Q. You had this to do with it that you directed that a certain amount should go to Charles?

A. I did nothing of the kind, sir.

Q. How did Charles get it?

A. He owned all of it.

Q. I know that, but then you got so much less for your share and that was assigned to Charles, and then it was divided as described here. Mr. Leathe got so much, Mr. Chipley, $78,300; Mr. Adams so much and you so much.

A. Yes, sir, and Mr. Needles; he had held two shares in the old company and I saw that he got it in the new.

Q. That was out of your share?

A. Why, no, I tell you there was none of mine in it. We agreed to divide in a certain way, and that was all there was to it.

Q. Then I understand you to say that there was no other arrangement between the parties except the agreement that was made that day, and appearing on these books?

A. That is not all of it?

Q. Is there any further writing than this?

A. The deed of the Belleville & St. Louis Railway Company.

Q. Do you say, Mr. Thomas, that Mr. Leathe agreed to the correctness of this account?

A. Certainly not; he did not know anything about the correctness of that, but that was the amount we were to receive because we told him that was the amount, and that is what we did it for, that is the reason he took it. He had no knowledge of these things except what we gave him.

Q. Was that not prior to the agreement of March 25th?

A. It was prior to the agreement of January 24th.

Q. I mean the agreement of January 24th.

648 A. And it is mentioned in the agreement as a matter to be paid according to this statement, if you can read the English language.

Q. Now, all sums coming to you, you said, should remain in his hands until matters had been attended to and fully arranged and paid?

A. Arranged and paid, yes, sir. That meant the indebtedness on the land that I had purchased before. The railroad company had borrowed money; they were to be paid and charged to me, and until those things were done Mr. Leathe was to arrange these matters, and when they were done they were charged to me, and until that time my money was to remain in his hands, my stock and stuff.

Q. How are those matters now?

A. Mr. Leathe had not arranged these things, and they are being sued on here in court because Mr. Leathe has declined to pay them.

Q. Now, do I understand you to say that he agreed to pay the Belleville & St. Louis Railway Company according to this statement?

A. This statement was referred to as being the indebtedness.

Q. For what consideration was he doing this?

A. For the deed from Belleville & St. Louis Railway Company to him.

Q. He turned that over at once to the other railroad company?

A. Certainly, in payment of his stock.

Q. In payment of his stock which he had already pledged to assign. So he agreed to pay all the debts of the new company, and agreed to take therefor half of the stock.

A. No, sir, I did not say that. I don't know that I ever said that. I said he was to get his money back out of the bonds. The contract said he should take it out of the bonds.

Q. Were the bonds to belong to him?

A. The contract says, not altogether.

Q. Which contract is that?

A. Of March 25th; he examined this thing carefully before he ever entered into it. Mr. Holmes was there acting for him.

Q. Now, I understand you to say that all the contract that was made is the one in writing in this book?

A. Yes, sir.

Q. And by it he agreed to pay all the old debts of the railroad company?

A. He agreed to pay the debts of the Belleville and St. Louis Railway Company at the time of the making of the deed.

649 Mr. KNISPEL: That was on the 25th day of March?

A. That was the 25th day of March; I think the deed is dated the 25th March.

Q. The deed referred to says a consideration of one dollar and other valuable considerations?

A. That is the deed.

Q. These other considerations were agreed on verbally?

A. Yes, sir.

Q. Well, when you say that this is the only contract, you mean that is the contract which was entered into on the books of this company, and signed by Mr. Leathe?

A. That is, on the books of the Belleville City Railway Company.

Q. And this contract abrogates all former contracts, etc.?

A. Yes, sir.

Q. Well, you say that contract was entered into on the 25th day of March by Mr. Leathe, and this other one on January 24th was not entered into at all?

A. No, sir, it was not entered into at all; on the contrary, he told me he had not signed it.

Q. When the Belleville City Railway charter was accepted in this way that you have spoken of here, that company was to go on and construct the road; that company was to complete the road that was partly constructed?

A. Yes, sir; the Belleville City Railway Company.

Q. The road that was partly constructed by the Belleville and St. Louis Railway?

A. Yes, sir; the whole business went over to them through Mr. Leathe.

Q. Why was it that the deed from the Belleville and St. Louis Railway Company was not made to the other company, but made to Mr. Leathe?

A. Because Mr. Leathe was told by Mr. Charles W. Thomas that he would have to pay up his stock in good faith; and for that reason the deed was made to Mr. Leathe, so he could pay his stock with it, and he was to pay all the indebtedness of the company for it. That was the statement that was made by Mr. Charles W. Thomas. Mr. Leathe and Mr. Charles W. Thomas seemed to have more to do with each other than any one else after this Belleville City Railway charter was talked of; Mr. Leathe consulted with Mr. Charles W. Thomas a great deal more than he did with me, and went over this ground themselves a number of times in my absence, and once or twice with me. I never knew that Mr. Thomas had made any of these memoranda until lately, when it was handed to me by
650 Mr. Chipley; I did not know he had made any.

Counsel for defendant then gave in evidence the records and minutes of the Belleville & St. Louis Railway Company; the minutes of March 25, 1893; and deed of Belleville & St. Louis Railway Company to Samuel H. Leathe, as follows:

"BELLEVILLE, ILL., *March* 25, 1893.

"At a meeting of the Board of Directors of the Belleville & St. Louis Railway Company the following proceedings were had. Present: Bart S. Adams, John T. Taylor, Alpheus Boling and Henry M. Needles. Meeting called to order by John T. Taylor, Vice President in the absence of John S. Hill, President.

The resignation of John S. Hill as President and Director of said company is presented and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board and Edward L. Thomas was elected to fill said vacancy.

On motion Edward L. Thomas was elected President of said company.

There being no further business the board adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*"

"BELLEVILLE, ILL., *March* 25, 1893.

"At a meeting of the stockholders of the Belleville & St. Louis Railway Company, the following proceedings were had:

Present:			
Bart S. Adams,	owner of	.....	62 shares.
John T. Taylor,	"	.....	50 shares.
Henry M. Needles,	"	.....	1 share.
Alpheus Boling,	"	.....	1 share.
Edward L. Thomas,	"	.....	876 shares.
Josephine Johnson,	"	(by proxy.)	10 shares.
Total		.....	1,000 shares.
and Edward L. Thomas,	"	.....	3,980 shares new stock.
Henry M. Needles,	"	.....	20 " " "
			5,000 " " "

On motion Bart S. Adams is elected chairman of stockholders' meeting and Henry M. Needles, Secretary.

Edward L. Thomas offered the following resolution:

'Be it resolved, that the president and secretary of this company be authorized and directed to transfer and deed to Samuel H. Leathe all of the property, rights of way, easements and grading of
651 this company, as per deed presented and bearing date this 25th day of March, 1893.'

Which resolution was unanimously adopted.

There being no further business before the meeting the meeting therefore adjourned.

BART S. ADAMS, *President.*

HENRY M. NEEDLES, *Secretary.*

"We, the undersigned, stockholders of the Belleville and St. Louis Railway Company, being present, hereby conf-rm the action of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ill., March 25, 1893.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

"The grantor, the Belleville & St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, and State of Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms

unto the said Samuel H. Leathe all the following described land situated in the county of St. Clair, and State of Illinois.

All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

Also all the rights of way, easements, grading and superstructures thereon, acquired by or for the grantor, for the purpose of building a railroad between Belleville & East St. Louis.

And the grantor covenants and agrees to and with the said Leathe that it will, upon demand, convey by a good and proper deed of conveyance to the said Leathe, or his assigns, any lands, easements, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March, 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

[Belleville & St. Louis Railway Co., March 25, 1889.]

Attest:
HENRY M. NEEDLES, *Secretary.*

652 We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*"

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who, being duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to said instrument for the uses and purposes therein set forth, as president of said company; that he is president of said company, and executed said deed as president, by order of the stockholders of said company whose names are subscribed thereto; also that the said Needles is secretary of said company and that he attached the seal of said company to said instrument by direction of said stockholders.

In witness whereof I have hereunto set my hand and notarial seal, this 25th day of March, A. D. 1893.

[NOTARIAL SEAL.] A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock, P. M.

E. L. THOMAS, recalled for the complainant for further cross-examination, testified as follows:

Cross-examination by Mr. KOERNER:

Q. Mr. Thomas, there has been a note shown here purporting to be signed by the Belleville and St. Louis Railway Company, by Henry M. Needles, secretary to Edward L. Thomas, for fifty-three thousand dollars, I believe, will you state to the court for what that was given?

A. That was given for its indebtedness to me, the indebtedness of the Belleville and St. Louis Railway Company to me.

Q. What did the indebtedness consist of?

(Objected to.)

Mr. KNISPEL: We have a stipulation in a law case being
653 tried that all pleadable defenses should be introduced under the general issue, but here now we have something that goes to the authority for executing the note, I see the drift of this, and that cannot be raised under the general issue.

The COURT: I will hear the evidence for what it is worth.

Mr. KOERNER: What did this indebtedness consist of?

A. It consisted of moneys expended, and liabilities incurred.

Q. How much is for liabilities incurred by you, and how much is for moneys expended?

A. The liabilities that were incurred by me were three thousand dollars as stated in the letter to Mr. Leathe, that was due by the railroad company; I used the money in the building, and is included in this note to be paid by me. I paid part of one note, and the others are not yet paid; that is the three thousand dollars mentioned in that letter. There is a liability that I am not certain whether it is my own or the Belleville and St. Louis Railway Company, a liability to the New York Bank Note Company; the suit is here now pending on it.

Q. Have you charged it?

A. Yes, sir, of course it would have to be paid. I would have to pay it if I recover on this note of course.

Q. It is included in that?

A. It is included in that statement that I made to Mr. Leathe at the time; these are all assumed by me, these are liabilities.

Q. What is that item you speak of, how much is it?

A. $625 was the amount of it at the time I made the statement, but that was not settled, and they may charge me $745; I am not certain about that, but they had agreed at that time to take $625 when we stopped the work. The amount named in that statement I believe is $625, whatever it is.

Q. That amount is included in that note as part of the note?

A. Yes, sir, that is all included in this fifty-three thousand dollar note, excepting some changes that were made, the changes did not amount to a great deal; the changes that were made, made the amount of the indebtedness about $48,302.30; the changes were

made when the settlement was made, less than the amount reported to Mr. Leathe.

Q. When who settled?

A. When the railroad company and I made a settlement, it was $48,202, and average interest on it made it $53,022.23.

Q. That was your claim against the railroad company?

A. Against the railroad company for principal.

Q. And the balance of it was interest?

A. That was interest according to the agreement there.

654 Q. Then I understand you to say the $48,000 included the three thousand dollars which you spoke of just now?

A. Yes, sir, that will have to be paid by me as a matter of course.

Q. To whom is that indebtedness due?

A. It is to Messrs. Gould, Shedd, Ferguson and Kent, but Mr. Leathe took up the Gould note.

Q. Is it an idebtedness of the Belleville and St. Louis Railway Company?

A. Well, it is signed this way; I don't think it is exactly, although it is signed by the Belleville and St. Louis Railway Company, by Edward L. Thomas, General Manager. There never was any authority given, it was done at the time I had a contract with Messrs. Gould & Shedd and Ferguson and Kent; they advanced me a small loan on those notes, and as a matter of course I am responsible for them and will have to pay them in the end; however that is not included in this amount, in this statement. Those three thousand dollars don't appear here at all in any sort of way; I will have to pay those three thousand dollars; they do not appear on the statements and do not appear on the note.

Q. Now state, Mr. Thomas, who did the grading?

A. I had a contract with the company to do the grading, and I got Mr. Boling to go in with me and he entered with me into a contract with the company, he and I were together in the grading, Alpheus Boling.

Q. You and Mr. Boling were together in the grading?

A. He and I did the grading, we did not enter into a contract together with the company; I had the contract with the company, and I employed him on certain terms to go in with me to do the grading; I looked after the financial matters, got the money and paid off the men, and did all that kind of business myself.

Q. Well, how much is due to Mr. Boling for the grading?

A. $15,438.80, $24,997.68 and $770, less the amount paid by Capt. Adams. I have credited that on the whole account, this grading is included in the construction account, and there is some timber that is included in the construction account. The whole amount amounted to $45,995.95, of which Capt. Adams paid $9,423.77, leaving a balance in that account of $36,542.18.

Q. That is for you and Boling?

A. That is on the construction account; not me and Boling; a great deal of this thing is what I did without Boling at all, it does not include him.

Q. Now, this timber, where is that?

A. That was on the ground, and is there yet; I had them cut
655 and shaved; they were never hauled out; they were hauled, I believe, by Mr. Lepere, and some of them were engaged to be hauled; but I do not know whether they hauled them, because about that time I was very unwell; and we were then engaged in this negotiation, and I did not do anything at the time.

Q. How much did that item amount to?

A. That was something like $63, I believe.

Q. Have you and Mr. Boling, for the use of Mr. Boling, filed any suit to recover for the grading against the Belleville City Railway Company?

A. I do not know anything about that, Mr. Koerner; in fact, I never examined it; I know there is a bill here, but I do not know what it is for; Mr. Boling claims a lien on the road as a sub-contractor; that is what I understand it was; I have never seen it.

Q. That will speak for itself?

A. Certainly.

Q. Well, that amount, whatever is coming to Mr. Boling, is included in this note?

A. Is included in this note; I made arrangement with Mr. Boling by which I was to pay him a certain sum in settlement; a settlement was made between Mr. Boling and myself by which I was to pay him a certain sum.

Q. When was that settlement made?

A. I am uncertain about that, but I think it was some time last spring; I did not tax myself with the date, but some time last spring, some time.

Q. Can you fix the date?

A. I think, probably, it would be April or May, but I do not recollect that; the reason of that was I wrote it, I think, some time before he agreed to it; there was considerable time before he agreed to it; I wrote it—I do not exactly know when it was.

Q. The agreement is in writing?

A. Yes, sir; it is in writing.

Mr. KNISPEL: What agreement was that?

A. The agreement between Mr. Boling and myself; I believe we both signed it; I am not certain; at any rate, it was a settlement between us as to what amount he shall receive.

Mr. KOERNER: Then, I understand you, the whole grading account amounted to $36,542?

A. That is the construction account; the construction account amounted to $36,542.18.

Q. Of which six thousand dollars, you say, is coming to Mr. Boling?

A. Well, yes, sir, six thousand. He does not get six thousand dollars; that includes another item or two, and then there — (?)
656 some joint debts that we have that are to be paid, that is recited in that instrument, of which he is to pay one-half out of that sum.

Q. That was all on railroad construction, was it not?

A. Well, those are our feed bills, and all those things that do

not appear here at all; it is in this grading account; it was not in there; it was feed, but it is in there; there are so many yards of work.

Q. Then, not counting this six thousand dollars, there would be $30,542.18 that is also included in this note that is coming to you on this construction account?

A. No, it is all coming to me from the Company.

Q. Mr. Boling has a suit pending?

A. Oh, well; I know that.

Q. If it is coming to you it would not be coming to him, would it?

A. It is coming to him from me; that is where it is coming from.

Q. Then he has no claim on the Railroad Company?

A. I don't think he has. I so told him before he brought his suit, that I did not think he had any claim, but I don't know what that has to do here.

Q. Now, out of this $30,500 and some odd dollars that you say is coming to you for construction, charged to the construction account, how much of that money had you expended?

A. You want to know how much I expended?

Q. Yes, sir; what I want to know is how much you owe to other people still, and how much you have actually expended yourself in this thing?

A. I have expended $41,882.40 in this railroad enterprise, that is actual money that I have expended without the interest that I have paid on it, and I owe on accounts that are unsettled, including that amount $53,271.10; that is the money that I have got in this enterprise actually.

Q. About that?

A. Well, I say that is just it; that is actually what I have got in the enterprise, without interest.

Q. That includes Boling's account?

A. Certainly it does. That includes what I expended on account of this railroad.

Q. How much did you say you expended for grading and construction account?

A. Well, you know I have not paid all of this; there are many of those accounts that I have not paid, that I am responsible for; there are eleven thousand and some hundreds dollars that I owe yet on account of these notes.

657 Q. How much is that?

A. I have the figures here exactly if you want them; on these outstanding accounts that I owe personally.

Q. But are all included in that note?

A. Certainly, that note contains the moneys which I expended in this railroad enterprise; it is included, that is not quite all of it; there are a good many things that are not, money which I expended that I did not put in.

Q. Can you give those exact figures?

A. I will give them to you; $11,338.70, that is the amount I owe engineers and all those things, including Mr. Boling's account. Let

me see; $53,271.10, less the $11,000, I must have made a mistake, yes, it is $41,932. It will appear in my statement there that the railroad company had the benefit of this too; because there had been a claim allowed me by arrangement with Mr. Holmes representing Captain Adams' heirs; and by Captain Adams formerly of six thousand dollars that was to be paid me for services in my settlement with the railroad company, and in my statement to Mr. Leathe I told him I did not want any services; afterwards we had a dispute about it, after the new contract came up and when I settled with the railroad company this is written on the bottom of the settlement: "This does not include anything for services, which I hereby waive in case this account is settled and paid E. L. Thomas."

Mr. KNISPEL: Is that six thousand dollars included in that note?

A. No, sir. There is nothing for services or anything of that kind. This note does not include the actual amount of money which I expended in the enterprise, with interest.

Q. You have got a separate construction account from the other account I understand you to say that you have and that it was $36,542.18.

A. I stated that was the amount less what Capt. Adams had paid toward it; this was the amount for which I was responsible and had paid, that is both, either paid or am responsible for.

Q. Well, now of this thirty-six thousand dollars, state to the court how much of that you have paid and how much you are responsible for?

A. No, I cannot divide that, Mr. Koerner, because I owe eleven thousand dollars.

Q. I am trying to get at the construction account now?

A. Well, I believe I can tell you in the construction account. $6,958.60; I owe that on the construction account.

Q. Are there any profits in this claim?

658 A. The six thousand dollars to Mr. Boling; that is the six thousand dollars I owe to Mr. Boling more than covers all the profits we made in the grading; as far as that is concerned, I made no profits whatever out of the grading, not a cent.

Q. Well, Mr. Boling has already paid lots of expenses, has not he?

A. He has no expenses, I paid all of those myself, Mr. Koerner. We bought five or six thousand dollars worth of stock and wasted it, lost it, or wore it out.

(Objected to.)

Q. These six thousand dollars then are profits?

A. They are the profits that Mr. Boling gets out of it, less his share of the partnership debt, and that is not all the profits even to him; but so far as I am concerned I made no profits whatever, not a cent, the fact is I lost money on it, lost interest.

(Counsel for the defendant objected to this testimony for the reason that it made no difference whether Mr. Thomas made a profit or not.)

The COURT: We will pass on that later on.

WITNESS: I did not make any.

Q. Are any of these charges on the right of way, that you have paid out?

A. I paid some of them, very little of them; Capt. Adams paid most of them; I can tell you what I paid.

Q. How much did you include in the note on the right of way that you paid out?

A. $1,275, excepting $250 that I am responsible for and did not pay.

Q. So then you have included in that note for right of way $1,275?

A. $1,275.

Q. Well is that part all paid for, that $1,275?

A. All but $250, that I am personally responsible for, not pending against the railroad company.

Q. So there is $250 on right of way account which is still owing?

A. It is still pending; the parties have sold the property to the railroad company, it is not exactly right of way; it is extra ground, it does not belong to the railroad; it is ground we bought for borrowing purposes from Mr. Beswick and Mr. Schmidt. There is no title to it because we simply took the surface for that purpose for the road at that time, that is all, so that does not appear in the general account of right of way; it is my personal indebtedness rather on the contract for grading; that is the fact of it.

659 Q. So the ground does not belong to the railroad company?

A. No, sir. We bought the right to take the dirt off of it; we bought the dirt from the ground of Mr. Beswick for which I agreed to pay him a certain sum of money for it and Mr. Schmidt.

Q. Then it belongs to this construction account?

A. Well, it does not really belong to the construction account, it is properly right of way account, but the company did not acquire any title to it.

Q. St. Louis, Alton & Terre Haute Railroad Company, $3,100?

A. That was paid by Capt. Adams.

Q. Who paid James Dunn $500?

A. Capt. Adams.

Q. Who paid Walter and Mary Gowan $200?

A. Capt. Adams.

Q. Who paid Joseph Touchette $350?

A. Capt. Adams.

Q. Who paid Joseph Beswick and wife one thousand dollars?

A. Capt. Adams paid $800, that is the $200 I have been speaking about; I am personally responsible for that.

Q. Wilhelmina Roemig $300?

A. Capt. Adams.

Q. Andrew Touchette $20?

A. I did.

Q. Thomas Burke for Donnelly heirs $200?

A. Capt. Adams.

Q. Alexander Touchette twenty dollars?

A. I did.

Q. McDonald $360?

A. I did.

Q. Schmidt $500?

A. Capt. Adams $450, I think that is it.

Q. Who paid the other?

A. I think it is fifty dollars; that is the fifty dollars I spoke of; I think that is still due, for taking ground from the outside, let me look at that; no, it is $25 due Schmidt.

Q. That is still due Schmidt?

A. Yes, sir. I had settled with him; I agreed with him for $75.00 we agreed for fifty dollars, Capt. Adams paid him $450 and I was to pay $50; I did not do it and he now claims $75; I think that is the way it is.

Q. He claims that against you?

A. Yes, sir. That is not right of way; Capt. Adams paid $400 and in my settlement with the railroad company there was a change made there of $75 instead of $25.

660 Q. In your statement that you speak of you made it $505?

A. Yes, sir. I had agreed with him on the outside, of $50 for the outside work.

Q. He still clams $75?

A. He claims $75.

Q. You have included that in the note against the company?

A. Yes, sir.

Q. Mrs. Ehrstein $50?

A. I paid that.

Q. William Lepere $20?

A. I paid that.

Q. Ben Atchison $425?

A. I paid that.

Q. George Merod $35?

A. I paid that.

Q. George Scherra $70?

A. I paid that.

Q. Now here is an item of contracts graded, in which you say there is to be paid items amounting to $10,600, that is part of the construction account, is it?

A. No, sir, that is not included in this note at all; I will tell you how this was. In the statement I made Mr. Leathe of the contracts that I had with persons for going through their land that I had not paid, but I had an agreement with them provided we did not take their coal; there were a great many of them, and that had never been changed when he went into this enterprise. Mr. Leathe went along and got nearly all of the coal, and most all of them, in fact I believe all of them of whom he bought the coal granted the right of way and there were three that did not; he did not purchase the coal of them and made subsequent contracts. At the time that statement was made those contracts were made but they were never paid and never——

Q. It is stated here "paid by Thomas & Adams."

A. No, it is not paid by Thomas & Adams and is not included in this.

Q. That is Capt. Adams alone, ain't it?

A. I don't know; that is the way I read it here; whatever it is, it is correct; Capt. Adams paid $8,150 cash.

Q. Is that included in this note?

A. No, that is included in the Adams portion.

Q. There was a division made?

A. This claim is—this was a statement made to Mr. Leathe to show the entire amount of money that went into this enterprise.

661 Mr. KNISPEL: Was it included in that note?

A. Not a particle of it; Capt. Adams' estate got a note, got it at the time I got mine; he got his to show his indebtedness, and I got mine to show my indebtedness; it has been standing for some time, and the company settled with him at the same time it settled with me.

Q. Now, here is 160 acres of coal, at $60?

A. Certainly.

Q. Did the railroad company buy that?

A. No, no; that was since bought by Mr. Leathe; we had agreed to buy that at $60 an acre, the coal, and Capt. Adams had paid $200 cash on that; that was included in his account, and I had given my note and mortgage for $7,200.

Q. That is charged to the railroad company?

A. Against the railroad company, that is to say, the shaft and the entry, that is charged——

Q. Against the railroad company?

A. Certainly; that was done for the purpose of carrying on the enterprise; it was to try the coal, to see whether the coal was there, for the purpose of trying it.

Q. How much of that coal account do you charge to the railroad company in your note?

A. Very little; the difference between $1,275 and $1,730; I have not figured it out, it is about $325.30, there were some small items.

Q. Mr. Thomas, in this coal purchased by the Crown Coal Company——

A. No, it was purchased by myself and Captain Adams and paid the cash payments.

Q. Who did you deed it to?

A. I deeded it to Mr. Leathe and he deeded it to the Crown Coal Company.

Q. Does this not charge it to the coal account instead of the coal company?

A. No, this is not charged for coal; this is charged for testing; the charge here is made for testing; for a trial shaft in order to float the railroad enterprise, not the coal enterprise.

Q. Is that charged in this note?

A. Why no, that is not charged; all that is charged in the note is $425, that is all.

Mr. KNISPEL: Just explain to the court, how you get that item—the item of $425?

A. I get that for labor, material, hauling and so forth, for the

sinking trial shaft, for the purpose of seeing the coal, all for
662 the purpose of floating the railroad enterprise, to do that it was necessary to have a trial shaft.

Q. It was moneys expended for that purpose?

A. It was money expended for that purpose,

Q. Was that paid?

A. That was paid.

Q. I see here in the account an item in 1889, "expenses to St. Louis, $172"?

A. Yes, sir.

Q. Whose expense was that?

A. My own.

Q. Your expenses for going to St. Louis?

A. For the purpose of floating this enterprise, getting somebody interested in it. During 1889, I went a hundred times, probably to St. Louis; to do so, think I charged half the expenses.

Q. Then "assistance $250," what do you mean by that?

A. A gentleman assisted me, and I owe him $250 for that.

Q. You owe him $250?

A. Certainly, I think that is the amount of it; you do not get things for nothing when you get people to help you; the attorney at law business I thought I was able to attend to myself.

Q. That was assistance in going to St. Louis, and getting——

A. No, no, assistance in getting men interested in this enterprise.

Q. Some promoters?

A. Promoter, yes, sir. I took people out over the route and went around with them, and going over the route myself; I was in St. Louis, probably a hundred times in 1889, to get people to take hold of the enterprise; trying to get somebody interested in it. I was engaged in that for one year and six months before Capt. Adams went in with me.

Q. In 1890, expenses to St. Louis, and East St. Louis, $262?

A. Yes, sir, I was in St. Louis, and East St. Louis, numbers and numbers of times.

Q. Chicago, $75?

A. Yes, sir, two or three times, and to Springfield two or three times.

Q. Trip to New York, Needles and self, $306?

A. That is the time we had the bonds signed.

Q. Then there is horse, buggy and harness, $245?

A. I purchased in the summer of 1890, a horse, buggy and harness, and used it up entirely.

Q. For the railroad company?

663 A. Yes, sir, I used it up entirely, and another horse besides that Mr. Boling had——

Q. Then board of horse $84?

A. Yes, sir. I had paid $15 a month there for some time; I think from June until the end of the year. After I got the horse and buggy we filled in the time then surveying.

Q. I see here in 1891 "securing ordinances" $135; where were they secured?

A. Here in Belleville.

Q. Ordinances for what?

A. For a road down Fourth South street and up Illinois street up to the public square; it was an expense that had to be paid. I had to pay to gentlemen for getting up petitions, etc. I owe Mr. John Bux $25 on that account.

Q. That is all included in there?

A. Yes, sir, that is my individual debt.

Q. Trip to Chicago, $74?

A. Yes, sir, we were there twice, I think.

Q. Churchill contract?

A. That was in 1891; Capt. Adams had died in March, 1891, then we began from September, 1890, to September, 1891.

Q. Did you pay the $1,500 on the Churchill contract?

A. I did not.

Q. Well, have you got the railroad company charged with that?

A. I have.

Q. Is it included in this note?

A. It is——

Q. You have not paid it?

A. I have not.

Q. Sullivan and Townsend contract $1,000?

A. That is not paid and is still due them, and is included in these $11,000 that I have given the court.

Q. What contract was that Sullivan Townsend contract?

A. It was to engage assistance and pay them their expenses and should they succeed in securing a man—Mr. Townsend was a very active man——

Q. All promoters?

A. Those two, yes, sir.

Q. You owe them $1,000?

A. I do.

Q. Do you charge that to the railroad company?

A. I do.

Q. Was Churchill?

A. The same.

664 Q. Also promoters?

A. Yes, sir.

Q. Options on coal $250?

A. That was expenses in getting options on coal; three or four times I was sick and I got Mr. Reiss and Mr. McConaughy and they had horses and buggies, I believe, and money, and so forth, paid out. There were three or four times I got those options so that we could get the coal if we should want it, and I believe when Mr. Leathe went in they had expired then.

Q. Was that not under the coal company contract?

A. No, that is not properly chargeable to the coal company. That is in the railroad enterprise, because it was necessary to have these to enlist anybody in the railroad enterprise; that was the reason of it.

Q. That $250, has that all been paid, or is a portion of it still due?

A. Well, I really have paid all of it, as far as that is concerned, except what I owe Mr. Reiss; I have not paid him.

Q. You charged that to the railroad company, did you?

A. Certainly.

Q. Rights of way $150?

A. That is rights of way.

Q. Knispel fees $250?

A. There is $500 there, yes, sir.

Q. $250 there is here?

A. Well, since that time Mr. Knispel and I have had a settlement and he insists on having $500.

Q. Have you charged $500 to this company?

A. Yes, sir, it is my individual indebtedness; the railroad don't owe anything.

Mr. KNISPEL: That was the condemnation suit on other railroad business; I was attorney in the Cairo short line and several others.

A. We settled the case afterwards and lots of other things.

Mr. KOERNER: The question is whether the work was done for the Railroad Company or Mr. Thomas?

A. It was for the Railroad Company, and Mr. Knispel asked me for that money.

Q. The question is whether it was done for the railroad?

A. It was done for the Railroad Company; there were several matters. He gave me written opinions on different questions that I wanted in this matter.

Q. "St. Louis $190," was that expenses?

A. Those are expenses for the year 1881.

665 Q. Board of horse $175, and livery $21.50?

A. That is East St. Louis livery.

Q. 1892, St. Louis, $250?

A. Yes, sir, I went to St. Louis all the time in 1892 nearly.

Q. That is all charged in the note, I understand?

A. All in the note.

Q. East St. Louis, $100?

A. Yes, sir; I was over there for weeks trying to get an ordinance.

Q. Stenographer, $122?

A. I think it was a little bit more than that, but I got Mr. Krebs' bill after I put in this account and I found I was short there about $50 or $60 on that account; it stood about $180.

Q. You owe Mr. Krebs——

A. I owe him about $100, about, or not quite that much; there are some other little things in the bill.

Q. Petition, $200?

A. Yes, sir, that is a petition for the track on Main street; we had gotten up one petition and had to get up another to come along Main street.

Q. Do you mean drawing the petition?

A. No, not getting it up; you know the expense of going around, paying men to do it and all that, going myself some and spending money.

Q. You owe that?

A. Not all of it.

Q. How much?

A. I cannot say that; I owe Mr. McConaughy some, Mr. McConaughy owes me on other things, and I do not know exactly how it is; when we come to settle up I will know how.

Q. Was that done for the Railroad Company?

A. It was.

Q. Ordinance City of Belleville, $500?

A. Yes, sir; we were at that a good while and had a good deal of assistance; we had a good deal of a fight.

Q. That $450, was that for expenses in getting the ordinance?

A. Not altogether; I will say, however, none of it was given anybody for a vote in the council; not a cent went to the council.

Q. Well, was that paid, or is it owing?

A. Well, part of it is paid, but I owe two gentlemen for that yet some.

666 Q. Did you employ Mr. McConaughy to do any work on behalf of the Railroad Company?

A. Yes, sir.

Q. Has he any claims against the company?

A. No, sir; against me.

Q. That is the understanding?

A. Yes, sir. He has no claim at all against the company; none of these gentlemen, I think; the understanding is that they would look to me for their pay.

Re-examination by Mr. KNISPEL:

Q. Mr. Thomas, you stated, or the gentlemen had you read from this statement, that the whole amount of the indebtedness was fifty thousand and some odd dollars, without interest; was that submitted to Mr. Leathe before he went into this enterprise?

A. Oh, yes.

Q. What was the reason that you submitted that to Mr. Leathe at that time?

A. To show him the amount of the indebtedness, so that he would know exactly what they were.

Q. What, if anything, did Mr. Leathe say about assuming such liabilities?

A. Nothing was said, only he entered into the enterprise on March 25th and assumed all the liabilities for a transfer of the property to him.

Q. At the time this deed, which I believe was introduced in evidence week before last, showing a transfer to Mr. Leathe in consideration of one dollar and other considerations—the other consideration is the indebtedness of the Belleville & St. Louis Ry. Co., was that part of it?

A. That was it.

Q. And upon this consideration Mr. Leathe received that deed?

A. He did.

Q. I believe that deed was introduced?

A. That deed was introduced, yes, sir.

Mr. KOERNER: They are all part of the record here.

Mr. KNISPEL: At the time this note was executed, upon what authority was it executed?

A. It was executed upon the authority of the Board of Directors of the Belleville & St. Louis Railway.

Q. Was the Board of Directors present?

A. Yes, sir.

667 Q. Were the items gone over?

A. Yes, sir, they were discussed; Mr. Adams and I did not vote on the question at all, being interested; the other directors were Mr. Needles, Mr. Taylor and Mr. Boling.

Q. Is that contained in this book—that proceeding?

A. It is; it was August 22*st*, I believe.

The COURT: Mr. Thomas, did this railroad enterprise, did it contemplate building a railroad for general purposes, or only for the transportation of coal?

A. The first intention was for the transporting coal only, after that, after Capt. Adams went in, to go right on; the first intention simply was to build a coal road, a coal line, out into the coal land.

Q. What was the main purpose, the main object of the enterprise?

A. The transportation of coal, owning our own coal and our own railroad, that was the idea.

Mr. KNISPEL: That was the first idea?

A. That is the idea yet, as far as that is concerned, but afterwards we had another idea.

Q. You got a right of way through the city?

A. That was through the contract I had with Mr. Gould and those parties.

Q. Before Mr. Leathe participated you had some grading done in the city of Belleville?

A. Yes, sir.

Q. And you secured an option for depot ground?

A. Yes, sir.

Mr. KOERNER: Is there an ordinance in force now allowing you to come into the city?

A. It has expired; there was a copyright here, or two of them.

Mr. KNISPEL: I believe it was testified to by you and Mr. Charles W. Thomas at the last hearing, that Mr. Leathe insisted upon substituting the Belleville City Railway charter for this?

A. Yes, sir.

Q. And thereupon the transfer from this Company was made to him and by him—it was to be made to the Belleville City Railway?

A. By him; yes, sir.

Q. And that was the general charter giving the full right to cross every street in the city, and I believe East St. Louis, too?

A. That was the idea, but as I said before, that was against my advice. Still I was so situated that I could not help myself.

668 Defendant then gave in evidence the resolution of the Board of Directors, stating the accounts with Mr. Thomas and authorizing the Secretary to issue the note.

"BELLEVILLE, ILL., *August* 21, 1893.

OFFICE OF BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

At a meeting of the Board of Directors of the Belleville & St. Louis Railway, held at the office of the Company, August 21, 1893, at 2 o'clock P. M., the following proceedings were had:

Present: All of the Directors.

Henry M. Needles, Secretary of the Company, reported to the Board that during the Presidency of John S. Hill, no action was taken under a resolution of this Board, adopted September 10, 1891, respecting the settlement of affairs between this Company, Edward L. Thomas and the heirs of W. A. Adams, and that since said Hill ceased to be President of the Company the said Secretary had stated accounts between Edward L. Thomas and this Company, and between Ellen S. Adams and Bart S. Adams, heirs of W. A. Adams, deceased, and this Company reports to the Board that there is due from this Company to said Ellen S. Adams and Bart S. Adams the sum of $27,462.65; that the said indebtedness is composed of the following items:

Money advanced to this Company by W. A. Adams in his lifetime, between the 1st day of September, 1890, and the 1st day of April, 1891, for the purpose of constructing the Company's railway, $23,674.72; interest upon same at the rate of six per cent. per annum, taking the average time during which the said money was advanced, and up to the 21st day of August, 1893, being in round numbers and omitting odd days (the interest for which was waived) the sum of $3,787.93. Total amount due being upon this day the sum of $27,462.65, and he further reports that upon stating an account between this road and Edward L. Thomas, he found to be due to said Thomas the sum of $53,022.23, which is composed of the items contained in the itemized account herewith, submitted to the Board and made a part of this report. Mr. Taylor moved that the report of the Secretary be accepted and approved, and that the Secretary of the Company be directed to execute and deliver to Ellen Adams and Bart S. Adams the promissory note of the Company for the said sum of $27,462.65, due one day after date, bearing interest at the rate of six per cent. from maturity until paid, and that the Secretary be further directed to execute and deliver to Edward L. Thomas the promissory note of the Company for the said sum of $53,022.23 due one day after date, and bearing interest at the rate of six per cent from maturity.

669 Mr. Boling seconded the motion, and Edward L. Thomas and Bart S. Adams refusing to vote, the motion was adopted by vote of all the other directors.

The board thereupon adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

Mr. THOMAS: I will say again, as I said the other day, that I would never have changed this original statement if I had known it to have been executed by Mr. Leathe, if he had not told me he

would not execute it, if he had executed it I should have held him to that by all means.

Q. You mean that of January 24th?

A. Yes, sir; January 24th.

Mr. KOERNER: He is willing now to stand by that?

A. If I could do it; I cannot stand by it; it is changed. If I could be replaced where I was with the contract in force I would be very willing to do it, but I cannot. It is impossible.

Mr. KNISPEL: That contract, I believe you testified, was entered into March 25th, and he signed the other one some time in August?

A. I did not testify to that, Mr. Chipley testified to that. I testified that he refused to sign it and told me he had not signed it all the time.

Q. These items put in the note had been carefully passed over and everything included therein that you had either paid or were responsible for?

A. All these different items that are still due, for instance Mr. Boling, Mr. Reiss to myself and to others, are personal liabilities of mine, and they have no claim against the company; they do not claim anything of the company and never have, they always have looked to me.

Defendant then gave in evidence the note issued by the Belleville and St. Louis Railway Company, as follows:

"$53,022.23. BELLEVILLE, ILL., *Aug.* 21, 1893.

One day after date the Belleville and St. Louis Railway Company promise to pay Edward L. Thomas or order, the sum of fifty-three thousand and twenty-two and 23/100 dollars with interest thereon at the rate of six per cent. per annum until paid.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By HENRY M. NEEDLES, *Secretary.*

Defendant rests.

And thereupon the complainant introduced the following in rebuttal, that is to say.

670 J. M. HOLMES, sworn for the complainants, testifies as follows:

Direct examination by Mr. KOERNER:

Q. What is your name?
A. J. M. Holmes.
Q. Where do you reside?
A. St. Louis, Mo.
Q. What is your occupation?
A. Lawyer.
Q. Are you acquainted with Mr. Edward L. Thomas?
A. Yes, sir.
Q. Do you know Mr. Charles W. Thomas also?
A. Yes, sir.

Q. Were you acquainted with Capt. Adams in his life time?

A. A great many years.

Q. Were you employed by Capt. Adams at any time?

A. Yes, sir. I have been his attorney I think for 15 or 16 years prior to his death.

Q. Were you acquainted with the enterprise at that time called the Belleville & St. Louis Ry. Co. and the Crown Coal Co.?

A. Well, I was acquainted with it in a slight way. I never knew very much about it, except that I knew that Captain Adams had an arrangement over here—I knew in the first place that he had a coal company over here called the Crown Coal Company in which Mr. Thomas, Mr. Taylor and himself were interested, and which was rather a small concern, and I knew also that he was engaged with Mr. Thomas in building a railroad as I supposed for coal purposes, that he always talked to me about, and I was trying to dissuade Captain Adams from going into that; I think Mr. Thomas will testify to that.

Mr. THOMAS: But I was a better persuader?

A. You was a better persuader than I was.

Q. Well after a while Captain Adams died?

A. He died in the spring of 1891, I think.

Q. Did you become better acquainted with this enterprise after that?

A. I examined into it a little bit more and had a talk with Mr. Thomas and informed him that the design of the Adams estate was, of the administrator was, to cease putting in any further, and was to get out what they had in there, was to turn their position from that of builders of railroad into simply creditors of railroads as far as it had gone; I will say that Capt. Adams left as sole heirs his wife and one sone, who at that time was about twenty-three years old, I think.

671 Q. That is Bartlet S. Adams?

A. Bartlet S. Adams; and I say from that time on I knew very little about the road; Mr. Thomas was making a great number of efforts to interest other people in it; bonds had been issued, I believe, and he had a considerable amount of them as security of the indebtedness which was due the Adams estate. That indebtedness was close to the neighborhood of twenty-five thousand dollars, with interest, amounted to about twenty-seven thousand dollars, and they held a number of bonds as collateral security for that; I know Mr. Thomas tried to make a deal with other persons and get them to take hold of the matter. I don't know that I was particularly informed as to what was going on between the time of Captain Adams' death and some time along in December, or fall last past.

Q. Are you acquainted with Mr. Samuel H. Leathe?

A. No, sir; not at that time.

Q. Are you now?

A. Yes, sir.

Q. Well then, your object was to collect this money for the Adams estate?

A. Yes, sir, solely; and to get them out of the railroad.

Q. You became aware of the negotiations which were carried on with Mr. Leathe?

A. Yes, sir.

Q. Did you learn of the contract that was made?

A. Yes, sir.

Q. That has been introduced here of January 24th?

A. Yes, sir.

Q. I will ask you whether you were present at the meeting of March 25, 1893, of the Belleville and St. Louis Railway Company?

A. Yes, sir.

Q. What do you know about the City Railway Company?

A. Well, I know this: I knew what the contract was; of course, I knew in the first place, it was the idea to get some one to go in there and complete the road and to give the person a lien for the money which they should put in, ahead of other persons; Mr. Thomas told me repeatedly that was the basis of the contract, and no one would go in and buy there subject to a lien for the money that had gone in before. I knew that a contract had been made by virtue of which Mr. Leathe was to advance the money necessary for completing that road; that the road was then to be built and bonded for the sum of five hundred thousand dollars, out of the proceeds of the bonds, after payment back to Mr. Leathe of the expenses incurred by the completion of the road, then the remainder of the amount was to be paid to Mr. Thomas and Mr. Adams, and no one
672 else. Such was my understanding of the contract that was made.

Q. Then what occurred afterwards?

A. Then this meeting was called from March, prior to March 25th, and I met Mr. Chipley; his position in the matter I never did clearly understand, that is, he was paid, as I understood, a commission by Mr. Thomas, as although he was acting then for Mr. Leathe.

I never did understand his position in the matter, I understood that they were to arrange to get hold of the Belleville City Railway charter, Mr. Adams told me that and Mr. Chipley seemed to have an interest in it, and Mr. Leathe asked me to come over to Belleville here to the office of Mr. Charles W. Thomas, where the great charter reposed and to examine it and see if the proceedings under it had been regular.

Mr. KNAPP: You were then the attorney for Mr. Leathe?

A. No, sir; not at all.

Q. Did you comply with the request of Mr. Leathe?

A. I came over with Mr. Leathe and examined this contract in which I was interested, and Mr. Leathe asked me—Mr. Thomas had asked me—I came equally as far as that is concerned—I only state the fact that he was the person who asked me to come over. I went over and examined and reported to him that I did not think there was anything in it that we wanted.

Q. You were representing the Adams estate?

A. I was representing the Adams estate, and as far as that is concerned, I was representing anybody else that was interested in the enterprise. I was the attorney for the Adams heirs who were interested in the enterprise, one of whom was Mr. Leathe, and he re-

quested me to come and make the examination, which I did, and knowing that he was the man who put in the money, I supposed, as a matter of course, he wanted to know what the charter was, and I reported to him, I reported to him about the charter, and I don't think I ever heard him say anything further about it. I heard no more about it until a little while before the 25th of March, I was told by one of the parties, I don't know who, I think Mr. Adams, that they had concluded to take in the Belleville City Railway charter, and that Mr. Ed. Thomas was to pay for it, that was the information given me.

Mr. THOMAS: Did he tell you I objected to it, too?

A. I cannot recall whether he did or not, but I think, as a matter of fact, that you did, I think we agreed on the matter of this charter.

Mr. THOMAS: I objected all the time.

673 WITNESS: Then I was informed by Mr. Adams also that a meeting was to be held on the 25th of March, I think, the record will show that, that was for the purpose of taking in this charter. I went over there, and the day before I went over, I am inclined to think, or the morning that I went, while I was waiting for the train at East St. Louis, Mr. Leathe spoke to me and asked me if I would also at that meeting represent his interests. After that time I never had a consultation with Mr. Leathe that I am aware of, and my acquaintance with him was extremely slight, in point of fact I did not know what he referred to. I went over there in Mr. Adams' interest to see that nothing prejudicial to the interest of the Adamses should take place there. Now, the method by which the Belleville City Railway charter was to be taken in was this:

(Objected to.)

Q. What was done to the Belleville City Railway charter?

A. The capital stock was increased from——

(Objected to.)

Mr. THOMAS: That is all a matter of record, everything that was done here on these books.

Mr. KOERNER: Mr. Holmes, was there anything said outside of that in relation to a change of the existing contracts between the parties?

A. Not a word.

(Objected to.)

Q. Everything that was done was put on the books there?

A. Yes, sir.

(Defendant objects to any further testimony in regard to what transpired at that meeting.)

Q. You heard Mr. Thomas' statement in regard to that; now state the facts.

A. Well, I can only say, if there was any agreement there on the part of Mr. Leathe to pay the debts of the Belleville & St. Louis Rv. Co. I never heard it; I can not state further than that. Had he made such a contract my interest in the railroad would have terminated;

I would have entered suit against him at the June term for the amount of the Adams debt, because I would very much rather take his agreement, as he had large real estate interests in St. Louis.

Q. Your business was to look after the interests of Captain Adams?

A. Wholly so.

Q. That was twenty-seven thousand dollars that this company owes Captain Adams' estate?

A. Yes, sir; I would have no object in holding the parties to that contract.

674 Q. Now, while you were present at that meeting representing Captain Adams' estate, you heard no promise of payment of those debts by Mr. Leathe?

A. Most assuredly I did not, that promise would have been very promptly acted upon.

Q. When did you first learn that there was any such promise as that supposed to have been made?

A. When Mr. Thomas stated it in the court room here; I never heard it before, well, not when he stated it in the court room. I think he set it up in his petition in this case or arguing the petition. That is the first time when the arguments had been made.

Q. Have you since that time continued in the employment of the Adams estate?

A. Yes, sir, right straight along. I done a great deal of business for them.

Q. Do you remember any conversation held the latter part of September or in October, in which Mr. Thomas was connected?

A. I do not remember the details.

Q. It was in regard to this contract of January 24th, was it not?

A. Yes, sir, I had a conversation with Mr. Thomas in my office; I cannot locate the date exactly. If I could get the day Mr. Chipley was removed as president I could give it exactly.

Mr. THOMAS: That was looking to a compromise and you know that you have no business to say anything about that.

A. No, I am not going to speak about a compromise, in that conversation you remember, at that meeting I told you that Mr. Chipley had come to me and wanted to have the stock in the Crown Coal and Tow Company issued; we wanted his stock issued to him at once, and that I had responded to him that he had no right to have that stock, that it might get into the hands of innocent holders, that it should be held for the protection of the parties who had contributed their capital there, and that as soon as the original parties had been protected and the matter had been settled that bonds ought to be issued for the amount that the different parties had put in and secured by mortgage on the road before the stock was issued. Thereupon I told you that Mr. Chipley was claiming under the terms of the contract of January 24th that he was entitled to it without security. Because it contained the terms that he should have the same proportion in any other company, and entitling him to have his two-fifths issued to him regardless of a question of security, and thereupon requested you——

Mr. THOMAS: That was in the way of compromise.

675 A. I didn't so understand it, but if you so understood it I will say nothing further.

Mr. THOMAS: It was so stated to me before I wanted to talk to you.

A. Let me call you attention, Mr. Thomas, it is true that you came over to talk compromise, and true that we discussed that at some length, but this had no connection with it, I was relating to you Mr. Chipley's position in the matter and that was all there was to it.

Q. Mr. Chipley was insisting upon this contract as late as September or October?

A. Yes, sir, about the last of October I think; he was insisting upon it that time.

(Defendant objects to this testimony.)

WITNESS: I would say there was no question made at that time about the company operating under some other contract than that of January 24th.

Mr. THOMAS: Did I not tell you that Mr. Leathe refused to enter into the contract of January 24th?

A. I do not think you told me that until very shortly thereafter.

Q. All that time, too, before?

A. No, not that I recollect.

Q. You have been appearing in this case as counsel?

A. Yes, sir.

Q. For the railroad company?

A. Yes, sir, I have been their general attorney I may say since the 1st of May, 1893.

Q. The Belleville City Ry. Co.?

A. Yes, sir.

Cross-examination by Mr. THOMAS:

Q. Mr. Holmes, you came over that morning when Mr. Leathe met you at East St. Louis and asked you to look after his interests also?

A. Yes, sir.

Q. He employed you to do so as his attorney?

A. No, I do not know as I was his attorney?

Q. Were you not an attorney?

A. Yes, sir, for the Adams heirs.

Q. And didn't he ask you also to look after his interests?

A. That is all that was said about it one way or the other, I believe.

676 Q. Now, Mr. Holmes, you say that you had a conversation with me at your office over there?

A. Yes, sir.

Q. Did I not say, Mr. Holmes, directly to you, did I not write you a letter in which I said I would come over to talk compromise of this matter?

A. Yes, sir.

Q. Did I not in pursuance to that letter come over and talk compromise and wasn't that whole matter regarded there as a compromise?

A. No, sir.

Q. You acting for Mr. Leathe?
A. No, that is not correct.
Q. Didn't you tell me you were employed by him before this?
A. No, I did not, I never was his individual attorney in my life, and am not now.
Q. You are employed by the Belleville City Railway Co?
A. Yes, sir.
Q. Are you appearing for him in this matter—were you acting for him in compromising this matter?
A. No further than I was acting for the Adamses.
Q. When were you employed by the Belleville City Railway Company?
A. The 1st day of May, 1893, the contract was dated that day.
Q. Who employed you?
A. I think Mr. Chipley.
Q. For the Ry. Co.?
A. Yes, sir.
Q. Did Mr. Chipley make the contract for both companies?
A. Yes, sir, the Coal Company and the Railroad Company.
Q. Who was present at the meeting March 25th?
A. Well, you were there, Mr. Charley Thomas was there, Mr. Needles was there, Mr. Bart Adams was there, Mr. John Taylor was there, Mr. Samuel Leathe and Samuel H. Leathe both were there, and then there were one or two whom I did not know.
Q. When this contract was made you say it was read aloud?
A. Which contract do you refer to?
Q. Of March 25th?
A. I do not recall that sir.
Q. When that thing was done?
A. When that resolution was written, yes, sir, it was read aloud.
677 Q. The resolution of March 25th was read aloud?
A. Yes, sir.
Q. And you examined it?
A. I don't think I examined it; I listened to it.
Q. Did you take it afterwards, did Mr. Leathe take it and hand it to you and ask you to read it?
A. I don't think he did; I either read it or heard it read, I am not quite sure about that.
Q. Did you consult and discuss with Charley Thomas about it?
A. Not that I am aware of.
Q. Did you not suggest an alteration in it before it was entered in the book?
A. Not that I am aware of.
Q. Did you say you did not?
A. I say I do not recollect.
Q. How does it come that you do not recollect those things and recollect others?
A. Because it is a mere matter of indifference whether I did or not as far as that is concerned.
I will say, Mr. Thomas, that I was perfectly aware of the contents.

Q. You were asked in East St. Louis by Mr. Leathe to represent him in that meeting?

A. Yes, sir.

Q. And you agreed to do so?

A. Yes, sir, to that extent; I say I never had any consultation with him at all.

Q. He asked you to represent him, and you agreed to do it?

A. Yes, sir.

Q. Don't you remember a change that was made in the resolution; it was read first and changed; it read first, Walnut street, in this town, and was changed to the original city?

A. I could not say that I remember it; I never knew Walnut street or the original city, and certainly it could not have been changed on my suggestion.

Q. Don't you remember that change was made?

A. No, sir, I do not; my impression would be it was the original draft as written, but I could not say that positively.

678 SAMUEL H. LEATHE, one of the complainants, being first duly sworn, testified as follows:

Direct examination by Mr. KOERNER:

Q. What is your name?

A. Samuel H. Leathe.

Q. Where do you reside?

A. St. Louis, Missouri.

Q. You are one of the complainants in this suit?

A. Yes, sir.

Q. In what capacity are you connected with the Belleville City Railway Company?

A. I am president of the Board of Directors, president and treasurer at present.

Q. State if you are acquainted with Edward L. Thomas.

A. I am.

Q. When did you first become acquainted with him?

A. In January last.

Q. Do you remember entering into a contract with him on January 24th. The one shown in evidence here?

A. I do.

Q. I will ask you, Mr. Leathe, when this first contract was made, immediately after January 24, 1893, whether you did anything under that contract?

A. I did.

(Objected to.)

Q. State what you did under that contract, Mr. Leathe?

A. I purchased property in pursuance of that agreement.

Q. How soon did you begin to purchase the property?

A. Well, I purchased one piece prior to entering into the contract, in anticipation of it, with the understanding——

(Objected to.)

Q. Now, Mr. Leathe, have you an account of the money expended about that matter?

A. Yes, sir.

Q. Well, referring to this, is this a correct statement of your expenditures?

A. That is a correct statement of what it purports to be.

Q. You may refer to it to refresh your memory?

(Objected to.)

Q. Now in regard to this railroad land?

679 A. The first purchase that was on the 27th, the first money paid was $500 earnest money in purchase of a lot on the river front East St. Louis, known as the Snyder lot, that was January 27, 1893, the earnest money was paid on that day and the deed was given some days later.

Q. Were there other expenses incurred between that day and March 25th?

A. Yes, sir, between the 4th and 21st of February I paid Major Stephens $27.10 as engineer services; on the 18th of February I paid Mrs. Snyder $2,000, completing the first payment on that lot; recording deed and notary fee $1.25; on the 23d I paid $150; on the 24th Edward L. Thomas I paid the First National Bank $750; March 1, Louis Graner, surveying lot 233, $16.20. That was to establish the boundary, and it was thought he knew better than our engineer; March 2, Frank Johnson, $15,000; March 5, A. C. Hucke, wire fencing for lot 233, $—; on the 8th, C. F. Stephens, engineers, laborers, $22.50; W. A. Reiss, $19.

Q. What was Reiss a[illegible] Stephens doing and these people that you paid this money to?

A. They were assisting to survey the line.

Q. That was construction work?

A. Construction, yes, sir.

Q. Those sums of $1,500 and $750 you paid them in pursuance of this contract of Jan. 24th?

A. I did.

Q. Now, I will ask you, Mr. Leathe, did you between any of those dates pay out anything for the Crown Coal and Tow Company or the Crown Coal Company, that is, prior to March 25, 1893?

A. I purchased a Tug for $6,000 on the 17th of January; on February 27th we purchased some coal property of Joseph Ehrstein and we paid $4,000 for the purchase of the coal lands and of Peter Schwinn on the same day $500; March 1, Mary Voellinger $4,300. The cash payment or the respective items up to March 1, were $6,043 that was up to the time of settlement. That tug was purchased in this way, $637.50 cash and $1,912.50 in different payments, there was a total of $22,100 that was purchased for the Crown Coal and Tow Company. There was an item for E. L. Thomas, bills receivable $1,050 cash, that was for his interest as I understood it and $7,200 preferred payments.

Q. Well, now, in order to make this thing short without going over it in detail, you may state how much you have up to this time

expended in cash for the account of the Crown Coal and Tow Company?

A. About $69,000; I should say $109,000.

680 Q. Is that in money?

A. $64,084.85 cents in money and $45,680.50 in deferred payments.

Q. Did you give notes for the deferred payments?

A. Yes, sir.

Q. Did you give your notes?

A. Yes, sir.

Q. They are still outstanding, are they?

A. Yes, sir.

Q. And $64,084.86 you have paid in cash?

A. Yes, sir.

Q. Do you mean to say that you have paid that, Mr. Leathe, or that the company, or how?

A. I paid it individually.

Q. How much have you paid for the account of the railroad company?

A. I have paid $51,744.40 cash payments.

Q. And deferred payments?

A. $17,124 deferred payments, and contracts entered into not paid $26,828.40.

Q. What was the last item?

A. Contract for grading.

Q. Which still have to be paid?

A. Yes, sir.

Q. These have all been made since you have taken charge of the railroad?

A. Yes, sir.

Q. Can you tell from your memorandum there how much of these moneys were on account of the railroad, and how much on the part of the Crown Coal Company, you paid prior to March 25th?

A. I can by figuring it up; $5,059.36 in money.

Q. On the railroad?

A. On the railroad, yes, sir, prior to March 25th.

Q. And in the coal company how much?

A. Well, I have included in this that payment of $770 for grading. That was during March, which I paid afterwards on March 30th.

Q. Well, that was for work done during the month of March, was it not?

A. That was for work done during the month of March, yes; at least it was done prior to the date of payment. I do not know just what date the work was done, but it was done subsequent, as I understand it.

Q. Who did you pay that to?

A. I paid that to Edward L. Thomas.

681 Q. How much was paid out for the coal company prior to March 25th?

A. $7,500; that was, $4,167.90 cash prior to March 25th on the coal account, and $45,680 in obligations.

Q. It is provided in the contract of January 24th: "Said Samuel Leathe and Lucien M. Chipley to put up funds to carry on said enterprise, and to negotiate and sell $500,000 five per cent. bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued." Now, I will ask you what was done towards placing the bonds in your possession; what was done at the time for the purpose of carrying it out; did they turn over any bonds?

A. Yes, sir. Mr. Adams turned over his, and I got two bonds from Mrs. Johnson, as was provided to be done, and two from the Third National Bank when the note was paid.

Q. Now, in order to get these bonds held by Mrs. Johnson, what did you do? Did you have to pay anything?

A. I had to pay her $1,500 at the request of Mr. Adams.

Q. Did you pay anything to get these bonds from the Third National Bank, that was St. Louis, was it?

A. Yes, sir.

Q. What did you have to do?

A. I paid a note for $750.

Q. Whose note was that?

A. That was a note of the Belleville and St. Louis Railway Company, and signed by Edward L. Thomas as general manager; I should say that was the way it was signed.

Q. Now in order to get the other bonds what arrangement was made with the First National Bank?

A. There was an arrangement with the First National Bank to turn over those bonds on certain conditions, and they were turned over.

Q. Well, under what authority were you entitled to these bonds?

A. It was under this contract; Mr. Thomas helped me obtain possession of them from the First National Bank; the negotiation was made through Mr. Thomas.

Q. And you got them by making a certain agreement which was all; which was done?

A. Yes, sir.

Q. Now this agreement says that they were transferred to you, Samuel H. Leathe, $255,000, and to Lucien M. Chipley $78,300 of the stock of the Belleville and St. Louis Railway Company; now state what steps, if any, were taken to deliver that stock to you, or was any of it delivered to you?

682 A. Yes, sir, some of that stock was delivered; Mr. Bart S. Adams turned over his stock to me; Mr. Thomas made an attempt to deliver his stock to me which was not successful; Mr. Stoddard the cashier of the Third National Bank refused to turn it over without the consent of Mr. Gould, who was absent at that time.

Q. What was the trouble?

A. Mr. Thomas authorized him to turn it over to me, and was

indignant, that they would not do it; but I didn't get possession of it until recently.

Q. Well, Mr. Thomas directed them to turn it over to you?

A. Yes, sir; Mr. Thomas directed it; he had a note that the stock should not be delivered to anybody without his consent.

Q. Who made that note?

A. Mr. Stoddard.

Q. The cashier of the bank?

A. Yes, sir, the cashier of the bank.

Q. Well, the only trouble was they could not be transferred because they were pledged for some other debt?

A. They were pledged for collateral for another affair.

Q. That was a debt of Mr. Thomas, was it?

A. I so understood it; I supposed at the time I paid the $750 that that gave me the stock; I supposed it would be turned over to me on that payment, but it seemed they had made some arrangement and Mr. Stoddard did not feel that he could do that for some reason or another; he did not say that there was any receipt out for it, but he could not do it because Mr. Gould was absent, and he wanted to be authorized by him; the understanding was that it would be turned over to Mr. Thomas as soon as that was obtained.

Q. Well, you say Mr. Thomas made some effort to get the stock and did not succeed?

A. Yes, sir, and then it was dropped and left and no further effort made for some time.

Q. And you have only received it lately?

A. Yes, sir, I learned subsequently that a garnishment process had been served on Mr. Stoddard and he was garnisheed and could not deliver it; that was the reason of the dropping of it; Mr. Kent was the man who garnisheed Mr. Stoddard on an outstanding note of his and he claimed——

Q. Mr. Leathe, where was that contract of Jan. 24th kept; in whose possession was it ever since that day?

A. It was in my possession.

Q. It was in your possession until it was introduced in evidence in this case?

A. I think so.

683 Q. I will ask you whether from that time forward you have acted under that contract?

(Objected to; objection sustained; to which ruling of the Court the Complainants by their Counsel then and there excepted.)

Q. Did you do these things?

A. Everything that I did was under this contract.

Q. Now Mr. Leathe, you say everything you did——

A. Everything I did and all the money I paid out was under this agreement. Subsequently we took on this other charter of which it was stated here was done at my urgent request. It was not so; I never requested that charter and did not know anything about it; it must have been made by placing Mr. Chipley in stead.

Q. Did you ever change that contract?

A. Never to my knowledge. The gentlemen here seemed to know a great deal more about the alteration of it than I do; I did not know anything about this thing of the alteration of the contract; it was entirely new to me; I never heard it spoken of until a few days ago.

Q. What about the Belleville City Railway Company, how did the Belleville City Railway Company come into this, what do you know about that.

A. I learned of that through Mr. Chipley; he had a copy of the ordinance and so forth, and seemed to think it was of great value, and I had very serious doubts about those; I thought it was too old but he seemed to think otherwise, and Mr. Thomas himself said it was alive; I did not place that value on it that Mr. Chipley did by any means.

Q. Well, what did you agree to do about it?

A. I agreed that it might go in, I did not object to it. I was willing it should come in.

Q. To be used?

A. To be used if it was of value and to be dropped if it was not.

Q. Now in order to get hold of that and to get in under that charter what were you advised was necessary to be done, or what did you do?

A. There was a meeting called of the different corporations, and there was one called for March 25th.

Q. Did you come to see Mr. Charles W. Thomas and Mr. Edward L. Thomas on one day previous to this meeting of March 25th?

A. Well, I met Mr. Charles W. Thomas in Mr. Chipley's office and I m Mr. Edward L. Thomas there.

684 Q. There was something said here about you meeting them together?

A. I do not remember positively of ever meeting them together.

Q. There was something said by Mr. Charles W. Thomas that he said that taking in the charter of the Belleville City Ry. Co. would abrogate the existing contract?

A. That was not said in my presence; I never heard that until I heard it here.

Q. Now previous to the meeting of March 25th did you ever decline to sign that contract?

A. I never declined to sign it. I did not sign it immediately at the time it was represented to me because I took it under further advisement to look the matter over and look over the scheme and so forth.

I did not sign it immediately. I did not think anybody asked me to sign it; I have no recollection of anybody at that time asking me to sign it. I remember one time Mr. Thomas putting this to me. "I do not know that you ever signed that contract." I said to him "I have been acting under it; I have been purchasing property under it, and so forth," and he said no more.

Q. Do you remember any other conversation with Mr. Thomas about signing that, or is that the only one you know of?

A. That is the only one I have had with him about it.

Q. Mr. Chipley said you signed that contract——

A. Mr. Chipley signed that contract in the office in the Security Building; Mr. Chipley never used a pen in my house to the best of my knowledge. Mr. Chipley thought we ought to sign it and we signed the contract. I did not object at all; I didn't think it was important; I never thought it was necessary to sign it.

Q. Did you say that you was to forget the date or anything of that kind?

A. No sir, I did not think the signing of that was very important.

Q. Then as he signed it you took the pen and signed it?

A. I did; I first signed it, I signed it before him.

Counsel for defendant then gave notice to the complainants to produce a bill in chancery which was filed in this court or presented to the court for an injunction in August 1893 between the same parties to this suit.

Mr. KOERNER: Mr. Leathe, I will call your attention now to the meeting of these corporations called for March 25, 1893. Do you remember those meetings?

A. I do.

685 Q. Now when these meetings were determined upon in conversation with you when you and Mr. Thomas or any of these parties met was it ever suggested that the purpose was to abrogate or change the existing contract that you had?

A. Never, I never heard them talk of any such thing.

(Objected to because the minutes speak for themselves, objection overruled, and defendant then and there excepted.)

Q. What, then, was the purpose of these meetings as you understood it?

A. The purpose was for conveying the property of the Belleville & St. Louis Railway to the Belleville City Railway Company, that was the arrangement.

Q. Did you have any reference as to which name the enterprise was to be conducted under?

A. I had no preference, except that if the Charter of the Belleville City Railway Company was of any value we should assume it; we did not propose to lose sight of the other charter.

Q. Now, Mr. Leathe, what was contemplated to be built under either of these charters; what was the enterprise that you were in?

A. To build a railway from East St. Louis to Belleville.

Q. Was it the railway which was already under way?

A. It was; part of it had been graded.

Q. Did it make any difference to you whether the bonds were issued by one company or the other?

A. Only that they should be issued by the one under which we were operating.

Q. You were to be secured on the same ground?

A. On the same basis, yes, sir.
Q. The same property?
A. Yes, sir.
Q. Now when you went to Belleville to these meetings, for the purpose you have stated, what did you find there at the meetings?
A. I found the papers all prepared; I found Mr. Charles W. Thomas and Mr. Edward L. Thomas there prepared to carry this thing through very rapidly; the papers were prepared and written up and read by Mr. Charles W. Thomas in a very hasty manner; we did a great deal of business in a very short space of time.
Q. Now, as far as you were concerned, Mr. Leathe, what was the purpose of attending these meetings?
A. My purpose was carrying out what was proposed, to change from one corporation to the other.
Q. Was there any suggestion that that should change the existing contracts?
A. None whatever.
686 Q. Now those deeds that passed between you and from you to the company, who prepared those deeds?
A. Charles W. Thomas; that is my recollection of it, he prepared them, in fact, I know he did.
Q. Well, you accepted one and signed the other?
A. I did.
Q. In the same sense and with the same purpose?
A. The same; for the purpose of transferring the property from one company to the other through me as a medium.
Q. That course was chosen by these gentlemen, was it?
A. Yes, sir, it was.
Q. Then you signed a paper of a resolution rather, which was adopted. I do not know whether the court is fully aware of that; you might read it, Mr. Leathe.
The COURT: Is that the resolution of the Belleville City Railway Co., adopted at the stockholders' meeting of March 25, 1893?
A. Yes, sir.
The COURT: I think that has all been read.
Mr. KOERNER: I will draw your attention to it to refresh your memory, that part of it which you signed.
A. Yes, sir; that was all done in pursuance of an agreement of January 24th.
Q. Was there any intimation or suggestion that that was in abrogation of this other contract?
A. None whatever; no such thing was ever mentioned by anybody, I don't think.
Q. It has been stated here that at one time during the meeting, when you accepted the deed from the Belleville & St. Louis Railway Company to yourself, which states a consideration of one dollar and other valuable considerations, that you agreed that the other valuable considerations should be in your paying the then existing indebtedness of the Belleville & St. Louis Railway Company?
A. That is not so, that is absolutely not so.
Q. Did you ever hear of that since that time?

A. I never heard of it until I heard it here in this room, never.

Q. There was never such claim made on you before that time?

A. No, sir.

Q. Do you remember any remark looking that way?

A. None whatever, had I, I would have disposed of it very quick; I would have had nothing to do with it.

687 Q. Do I understand you that you ever made such an agreement?

A. I never did; I would have been insane to have done it; it would have been absurd on its face; in the first place I had not the money to do it and besides all these items of expenses submitted to me by Mr. Thomas were to be overhauled in the future; at that time I made the agreement I never had read it at all; and the understanding was it was to be verified; whatever was right, was to be, if the thing went through, if it was carried out, that was to be the basis whatever was right.

Q. On the basis of what?

A. On the basis of the cost, of what was the proper cost, the reasonable cost.

Q. When was it to be paid?

A. It was to be paid after the completion of the work; it was to be paid out of the proceeds of the sale of the bonds after I had been remunerated for the money that I had expended.

Q. Did you on that day, the 25th of March, or at any other time, ever agree to pay the debts of the railroad company, except as stated under the agreement of January 24, 1893?

A. I never did and never shall, I don't think, agree to do anything of such nature.

Q. Now then, after those deeds were passed after that meeting, did you make any transfers of stock?

A. I did, yes.

Q. What book is that you have in your hand?

A. This is the Belleville City Railway Company's Transfer Stock book.

Q. I will ask you what transfers of stock did you make on the 25th day of March, 1893; I understood you to say that you have seen this book?

A. I have since the 25th day of March; I don't think I ever saw it prior to that day, I don't think.

Q. You have it before you now?

A. Yes, sir, I can refer to it; C. W. Thomas, 249 shares, March 25th; L. M.Shipley, 783 shares, March 25th; E. L. Thomas, 769 shares; B. S. Adams, 499 shares; John T. Taylor, 126 shares; Needles 19 shares same date; Samuel Leathe one share on the same date.

Q. Now, what was paid for it—what did you get from these gentlemen for the transfer of this stock?

A. What did I get?

Q. Yes, sir, at that time did you get anything for it?

A. I got nothing for it.

688 Q. I see this agreement of January 24th does not speak of anything going to Mr. Charles W. Thomas; how did you happen to make that?

A. Well, that was under the arrangement made between Mr. Chipley, Mr. Thomas, or between Mr. Ed. L. Thomas and Mr. Charles W. Thomas, that he was to pay him, and I was to transfer the stock.

Q. And were you requested to?

A. I was so requested, yes, sir.

Q. By Mr. Thomas?

A. Yes, sir.

Q. And the shares to Mr. Needles, how did you happen to transfer them?

A. Because I was so directed by Mr. Thomas.

Q. Now, does the aggregate amount of shares assigned to Mr. Thomas and Mr. Needles correspond to what we was entitled to under the contract of January 24th?

A. Yes, sir, it does.

Q. Now about the amount that you assigned to B. Adams; is that the same?

A. That is the same, yes, sir.

Q. Is it the same with Mr. Taylor?

A. Yes, sir.

Q. The same with Mr. Chipley?

A. The same.

Q. Was there ever any consideration except the agreement of January 24th for these transfers?

A. None, whatever.

Q. Now was there any other agreement except that of January 24th, by which transfers were made?

A. No, sir, there was no other agreement.

Q. Well, the amount which you assigned to them was regulated as I understand you, by the agreement of January 24th?

A. There was no other agreement ever talked about being made, Mr. Thomas at one time submitted another agreement, it was submitted by letter of some kind, but Mr. Chipley would not accept it; a few days afterwards he wanted to take this back and substitute another one, which we would not give back; it was a letter of Jan. 12th that he wanted to change.

Complainants then gave in evidence the stock transfer book.

I hereby assign and transfer unto Samuel H. Leathe, four thousand, nine hundred and ninety-five shares of the capital stock of the Belleville City Railway Company, subject to call of one hun-
689 dred per cent. made thereon this day by the board of directors of said company, which he assumes.

March 25, 1893.

CHARLES W. THOMAS.

For value received I hereby assign and transfer to Charles W. Thomas, two hundred and forty-nine shares (249+1=250) of the capital stock of the Belleville City Railway Company.

March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to Bartlett S. Adams, four hundred and nine-nine shares (499+1=500) of the capital stock of the Belleville City Railway Company.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to Edward L. Thomas, seven hundred and sixty-nine shares (769+1=770) of the capital stock of the Belleville City Railway Company.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to Lucien M. Chipley, seven hundred and eighty-three shares (783=783) of the capital stock of the Belleville City Railway Company.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to John T. Taylor, one hundred and twenty-six shares (126+1=127) of the capital stock of the Belleville City Railway Company.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to Henry M. Needles nineteen shares (19+1=20) of the capital stock of the Belleville City Railway Company.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer one share of the capital stock of the Belleville City Railway Company to James H. Waddock.
March 25, 1893.

SAM'L H. LEATHE.

For value received I hereby assign and transfer to James H. Waddock one share of the capital stock of the Belleville City Railway Company.
Aug. 5, 1893.

BART S. ADAMS.

For value received I hereby assign and transfer to Samuel H. Leathe one share of the capital stock of the Belleville City
690 Railway Company, it being the same share assigned to me by said Leathe on the 25th day of March, 1893.
August 5, 1893.

JAS. H. WADDOCK.

For and in consideration of five hundred and fifty dollars to me this day in hand paid, I hereby assign and transfer to Samuel H.

Leathe five shares of the capital stock of the Belleville City Railway Company, and two shares of the capital stock of the Crown Coal & Tow Company.

St. Louis, Aug. 24, 1893.

BART S. ADAMS.

For value received I hereby assign one share of the capital stock of the Belleville City Railway Company to Frederick B. Merrills.

August 26, 1893.

SAM'L H. LEATHE.

Q. I will ask you now to look at this book, and see what it is.

A. That is the Crown Coal Company, organized February 17, 1887.

Q. What transfers did you make of stock in that company; it is on page 32?

A. I transferred 298 shares to Ed. L. Thomas; Taylor, 42 4/5 shares; Bart S. Adams, 129 shares; L. M. Chipley, 313 1/5 shares; Henry M. Needles, 8 shares; Charles W. Thomas, 100 shares; dated March 29, 1893.

Q. Now, under what arrangement, agreement or contract were those transfers made?

A. Under the agreement of January 24th.

Q. Was anything paid on them by any of these gentlemen to you?

A. No, sir; nothing at all.

Q. How was the amount of stock which was transferred to each of these gentlemen arrived at?

A. It was arrived at on the basis proposed by this agreement.

Q. That is, they maintain the same proportion in this company as in the other?

A. Yes, sir.

Q. Was it on that basis that the transfer was made?

A. It was on that basis that the transfer was done.

Q. And as in the other out of Ed. Thomas' share the stock was issued to Charles W. Thomas and Henry M. Needles?

A. That is right.

Q. In the same proportion as the other?

A. In the same proportion, yes, sir.

Q. Did you at any time under your arrangement with these parties up to this date have any contract with respect to the rail-
691 road or with the railroad company or anybody else except this agreement of January 24, 1893?

A. That is the only contract.

Q. Do you know Mr. Holmes here?

A. I do.

Q. How long have you known him?

A. I have known Mr. Holmes since some time in March.

Q. Is Mr. Holmes your attorney?

A. He is not.

Q. Does he represent any corporation with which you are connected?

A. He is attorney for the Belleville City Railway Company and the Crown Coal & Tow Company.

Q. In this litigation is he representing you?

A. No, sir, he is not.

Q. Since the time that he has represented these corporations of which you speak, has there been any litigation of your own in which he has been opposed to you?

A. There has; I have another attorney in St. Louis who is doing business for me and I have engaged a second one since that.

Q. Whom did Mr. Holmes represent in this business from the beginning?

A. He represented, as I understood, Mr. Bart S. Adams.

Q. Up to now?

A. Yes, sir; I never knew Captain Adams.

Q. They have claims against these companies?

A. They have.

Q. Referring now to the statement which you made some time ago, do you remember the controversy which occurred between Bart S. Adams and the company last summer?

A. I do not know what you refer to now.

Q. With reference to the sale of some stock?

A. Yes, sir.

Q. Who did Mr. Holmes represent then?

A. He represented Mr. Adams, and carried on the negotiations for him.

Q. I wish to call your attention to a statement made some time ago, that, in accordance with this agreement of January 24th, you had taken up a note for $750 from the Third National Bank?

A. Yes, sir.

Q. Have you that paper with you?

A. Yes, sir, I have (producing it).

Complainants then gave the note in evidence.

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(Copy.)

$750.00. 69787.

St. Louis, *November* 21, 1892.

Six months after date we promise to pay to the order of Third National Bank Seven Hundred and Fifty Dollars at..... without defalcation.

Value received.

May 24.

No. —.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS, *General Manager.*

Endorsement: David B. Gould. Bonds # 49 & # 50. $1000 1 b. Belleville & St. Louis Ry. Collateral..... Third National Bank. Paid. St. Louis, Mo.

Cross-examination by Mr. THOMAS:

Q. When did you sign the contract that you say is in force of January 24, 1893?
A. I cannot state the date on which I signed it.
Q. Was it as late as the 27th day of June?
A. It is possible.
Q. The 27th day of July?
A. No, sir, it cannot be as late as that; it may have been in June.
Q. Mr. Leathe, the contract that you speak of as being in force, provide- that you should take up this note?
A. Yes, sir.
Q. Did it provide that you should take up the Johnson note?
A. Yes, sir, to furnish money to do it.
Q. You took up this note, did you?
A. I took up this note.
Q. And took my note for it?
A. I did.
Q. You demanded my note for it?
A. Yes, sir, I thought that was the best memorandum.
Q. You demanded my note for it and also Mr. Adams' note for $15,000?
A. Mr. Adams also gave his note, yes, sir.
Q. When you bought the tug Parker did you take Mr. Adams' note for that also?
A. That was before we had made this agreement.
693 Q. Did you take Mr. Adams' note?
A. I did, and gave it back to him afterwards.
Q. After we entered into the agreement of March 25th?
A. Yes, sir.
Q. Now, Mr. Leathe, was the deed from Mr. Snyder taken in your individual name?
A. It was.
Q. This contract did not provide that any of these things should be done in your individual name, did it?
A. It was your suggestion that it should be done so.
Q. What was the reason of it?
A. Well, so as to wait until we got further along.
Q. Until you had signed the contract, was not that it?
A. No, no, there was never a condition of that kind.
Q. Was there anything said about that?
A. No, sir.
Q. Nothing of the kind?
A. Nothing of the kind.
Q. You never refused to sign the contract?
A. I never refused to sign.
Q. At no time and no place?
A. At no time, nowhere, except, I will modify that; I will say I did not sign it at the time, but I did not refuse to sign it.
Q. You took it with you then for consideration?
A. Yes, sir, I had hardly read it; and after that I never refused to sign it.
Q. You never refused to sign?

A. I never refused to sign.

Q. You never said you would sign it to anybody?

A. To you or any other person, no, sir, and you know very well that I never refused to sign it.

Q. I do not want to get into a dispute with you about it; just answer the questions and we will not get into a dispute. Now, Mr. Leathe, this contract also provided that $150,000 should be placed in your hands, what was the purpose of that?

(Objected to on the ground that contract speaks for itself.)

Q. Was that not for the purpose of having them canceled?

A. It was for the purpose of getting the property into my possession.

Q. Were they not to be canceled?

A. There was no proposition made about that.

Q. I know, but were they not to be canceled upon the issue of new bonds?

A. There was nothing said about that.

Q. You had the book of the Belleville & St. Louis Railway Company in your hands?

694 A. No, sir, I did not.

Q. You wrote a letter for it; I mean prior to this agreement?

A. No, sir, I had no book.

Q. You never had seen it?

A. I never had seen it very closely.

Q. Well, you were to take these bonds and hold the $150,000, that is right so far?

A. I did.

Q. So you went to the bank here and made a contract with the First National Bank there in Belleville to get $90,000?

A. You went with me and drew up a sort of an agreement, I think there is a copy here.

Q. Let us see that copy. That is what I want.

A. I didn't know where it is; I do not know that I have it; I guess I am mistaken; I have not got it here.

Q. It provided that you should return to the bank the old bonds? New bonds or the money the 27th day of August?

A. Before a certain date, yes, sir.

Q. Six months after the 27th day of February.

A. I do not remember exactly the date.

Q. Well, now you say you were working all this time under this contract of January 24th?

A. I was.

Q. It was not abrogated in any sort of way?

A. No, sir, not to my knowledge.

Q. What made you go to the bank on the 27th day of August and offer to deliver the old bonds back to it, if you were working under this contract?

A. Because it was provided in the agreement with the bank; the new bonds had not been issued.

Q. But, under this contract, what made you offer the old bonds back?

A. Because it was provided for under this agreement.

Q. But you say you were acting under this agreement; you say you wanted to carry out this contract?

A. Yes, sir.

Q. And yet, notwithstanding that, on the 22d day of August you go to the National Bank and offer back $90,000 of these bonds to them?

A. Because I had an option to do which I pleased.

Q. You had an option to issue new bonds?

A. I had an option to issue new bonds when they were ready.

Q. Did I not try to get you to issue them all along?

695 A. You were trying to get them in New York, and you owed, and they would not do it until you paid it.

Q. That was a debt of the company. Did you not get them, and did you not afterwards get the bonds?

A. Your brother, Charles W. Thomas, and myself did it.

Q. Where did you get them?

A. I do not recall the date; they are dated July 1st.

Q. Did you not get them, and have them here and signed, before the 1st of August?

A. The mortgage was not executed.

Q. But they were ready?

A. The bonds were ready, but there was no mortgage.

Q. Everything was done, was it not?

A. No, sir.

Q. Who delayed it, you?

A. I think your brother.

Q. Did you not file a bill, Mr. Leathe, to enjoin the proceedings ordering you to issue these bonds by the Belleville City Railway Company?

A. No, sir. I did not for that purpose, no, sir, not for that purpose. It was for holding meetings that were not regular.

Q. You say you did not? Did not that meeting provide?

A. I knew of nothing that had been done at that meeting.

Q. You did not?

A. No, sir.

Q. Did not Charles W. Thomas explain the matter to you before that meeting was held, and drew up those resolutions and presented them to you?

A. I should say not; I should say no.

Q. Is it possible that he did?

A. If he did I could find it.

Q. And yet you say you knew nothing of what was going on; what was taking place?

A. I did not know.

Q. He practically stated to you what was going to take place.

A. No, sir.

Q. There was no resolution drawn up and presented to you?

A. No, sir.

Q. Prior to that time?

A. No, sir, I should say not.

Q. Do you say yes or no?

A. I should say that to the best of my knowledge and belief there were not.

696 Q. Now, Mr. Leathe, have you not got memory enough to know whether or not that thing was done by Mr. Charles W. Thomas?

A. I say without any hesitation I think they were not.

Q. I will ask you if you did not call a meeting of the Board of Directors for the 9th day of August?

A. I did not.

Q. Did you write a letter directing the secretary to call it?

A. No sir, I did not.

Q. You did not?

A. No, I did not.

Q. Charles W. Thomas was secretary?

A. Yes, sir, he was secretary. Did you say directors' meeting not a directors' meeting, a stockholders' meeting.

Q. Did you say stockholders' meeting?

A. Did I say directors' meeting.

Q. Did not Mr. Charles W. Thomas that day or a day or two prior to that tell you there was no necessity of the stockholders' meeting, that it must be a directors' meeting, and that you thereupon called it?

A. That is, I objected to it.

Q. And you thereupon called it?

A. A stockholders' meeting.

Q. Did you say so?

A. I say so.

Q. Now, Mr. Leathe, on the 9th day of August you were notified by the secretary that four of the directors had met and that they had held a meeting and would hold a meeting on the 11th of August and wanted you present?

A. Yes, sir.

Q. Did you attend that meeting?

A. No, sir.

Q. The proceedings that were then had you knew of and you say they were for the purpose of getting you to issue these bonds, were they not?

A. No, sir.

Q. Was not that the sole purpose of the meeting?

A. No, sir, that was not the sole purpose of it.

Q. Well, then, you had plenty of time to issue these bonds before the 22d day of August, did you not?

A. There would have been time enough if the circumstances had been favorable.

Q. From the time of the return of my brother in the middle of July these bonds were here by the 1st of July?

A. Well, I do not recollect the exact date.

697 Q. Now, then, after the mortgage was printed, Mr. Leathe, was there not ample time and more than ample time for you to get those bonds out prior to August 22d?

A. If we had pressed business perhaps there might have been.

Defendant then gave in evidence the record of the meetings of directors of the Belleville City Railway Company.

VOLUME III.

WEDNESDAY, *August 9th*, 1893—10 o'clock a. m.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office at and in pursuance of a call of the president, whereof all the directors had notice, on Wednesday, August 9, 1893, at 10 o'clock A. M., the following proceedings were had. In the absence of the president and vice-president, Mr. Bart S. Adams was made president of the meeting. Present: Thomas, Adams, Waddock and Taylor. Mr. E. Thomas moved that inasmuch as important business was to be transacted by the board, and it was for the best interest of the company that all the directors should have an opportunity to be present, that the board adjourn to meet again at the company's office on Friday, August 11, 1893, at 10 o'clock A. M. and that the secretary be directed to notify all the absent directors thereof. Mr. Taylor seconded the motion and it was unanimously adopted, and the board adjourned in pursuance of said motion.

CHARLES W. THOMAS, *Sec'y.*

BART S. ADAMS,
President of Meeting.

FRIDAY, *August* 11, 1893.

At a meeting of the board of directors of the Belleville City Railway Company, held at its office in the city of Belleville, Friday, August 11, 1893, in pursuance of the last adjournment, the following proceedings were had. Present: Thomas, Adams, Waddock and Taylor. Mr. Adams in the absence of the president and vice-president was made president *pro tem.*, for the purpose of this meeting. The secretary then presented to the board the following report:

To the board of directors of the Belleville City Railway Company:

The undersigned secretary of said company respectfully reports that the president of said company has caused 500 bonds of the company to be engraved and signed by the president and secretary and sealed with the seal of the company, representing an indebtedness of $500,000 upon the form set out in the annexed mortgage or deed of trust, and that the secretary has caused to be prepared for execution, a mortgage or deed of trust, a copy of which, omitting the signatures, is hereto appended.

August 11, 1893.

CHARLES W. THOMAS, *Secretary.*"

698 Mortgage appended to said report.

Mr. Taylor then introduced the following resolution, and moved its adoption:

Resolved, That the acts and doings of the President and Secretary as set out in the foregoing report spread upon the records of the

company, be ratified and approved by the Board. Mr. Waddock seconded the motion, and it was adopted by a unanimous vote.

Mr. Thomas then introduced the following resolution, and moved its adoption:

Resolved, That the President and Secretary be directed to execute the mortgage or deed of trust set out in the report of the Secretary, this day made to the Board, and to deliver the same with the $100,000 of the bonds of the company already executed, to the St. Louis Trust Company, Trustee, named in the mortgage, to be dealt with as agreed between this company and said trust company. Mr. Taylor seconded the motion, and the resolution was adopted.

Mr. Waddock introduced the following resolution, and moved its adoption:

Resolved, That the Treasurer of this Company be directed to procure and receive from the St. Louis Trust Company the $500,000 of the bonds of this company and to deliver them to Samuel H. Leathe individually, under his contract with this company, to be handled and used by him as therein provided. Mr. Thomas seconded the motion, and the resolution was adopted.

Mr. Taylor introduced the following resolution, and moved its adoption:

Resolved, That the treasurer be directed to pay to Edward C. Rice, of the first money coming into his hands as the proceeds of the company's bonds, the sum of $1,500, in payment of amount advanced to this company by said Rice for the purpose of purchasing a right of way along the St. Clair County turnpike, the said Rice to accept said sum as in full of all his claims and demands upon or against this company, and that the secretary be directed to inform Mr. Rice that this company acknowledges the said indebtedness. Mr. Waddock seconded the motion, and the resolution was adopted.

Mr. Thomas introduced the following resolution, and moved its adoption:

Resolved, That Charles W. Thomas be allowed and paid the sum of five hundred dollars for the services to this company prior to March 25, 1893. Mr. Waddock seconded the motion, and the resolution was unanimously adopted. Mr. Charles W. Thomas
699 stated to the Board that he desired that the said sum of $500 be applied in payment of the calls on five shares of the company stock, now held, one share each, by himself, Henry M. Needles, Bartlett S. Adams and Edward L. Thomas. Mr. Taylor moved that Mr. Thomas' request be granted. Mr. Waddock seconded the motion, and it was carried. Mr. Taylor moved that the President and Secretary be directed to issue certificates of stock to the stockholders of record. Mr. Thomas seconded the motion, and it was adopted. On motion, the Board adjourned, to meet on Monday, August 21, 1893, at 10 o'clock A. M.

CHARLES W. THOMAS, *Secretary.*

BART S. ADAMS,
President pro tem.

August 21, 1893.

Q. Don't you know that Mr. Bart S. Adams, Mr. John T. Taylor and myself, and Mr. Charles W. Thomas were urging you all the time to issue these bonds?

A. You were urging me to hold meetings, to oust Mr. Chipley.

Q. Did you not tell Mr. Taylor and Mr. Thomas that you were going to hold a meeting on the ninth day of August?

A. He was to hold a meeting on the 9th of August, and I notified your folks by letter that I could not get away, and postponed the meeting; but that was a stockholders' meeting; I never called a directors' meeting, because we wanted to do things as stockholders that could not be done as directors.

Q. What was that?

A. I do not recall what the business was, but we wanted to have a stockholders' meeting.

Q. Don't you know, Mr. Leathe, there was nothing that the stockholders could do at that time at all?

A. Yes, sir, there were some changes in some proceedings that must be done by the stockholders.

Q. What were they, Mr. Leathe?

A. I do not think I could recall the objects of the meeting.

Q. Now, Mr. Leathe, you said a moment ago that you intended to take this Belleville City Railway Company charter and use it, and if you found you could not use it, that you would go back to the Belleville & St. Louis Railway Company?

A. That is right.

Q. That was your intention?

A. Yes, sir.

Q. There is no question about that now, at all?

A. There was no question but that we were to hold onto the old charter.

Q. None whatever?

700 A. No, sir.

Q. There was no question you were to hold on to it?

A. And we continued to hold on to it.

Q. Did you sign this affidavit, Mr. Leathe?

(Showing witness a paper.)

A. That is my signature.

Q. You swore to that?

A. I suppose so.

Q. Was that the truth?

A. Yes, sir.

Q. It was true, was it not?

A. It was so intended.

Q. You say in this, Mr. Leathe, the following: "But the intention and purpose controlling all parties in the transaction was to simply change the corporation of the Belleville & St. Louis Railway Company to that of Belleville City Railway Company, and thereby terminate and wipe out the corporation known as the Belleville & St. Louis Railway Company." Was that true?

A. Yes.

Q. Now you say it was not the intention?

A. I do not say it was not the intention.
Q. In this affidavit you have said so?
A. I say up to a certain date.
Q. Did you not just a few minutes ago swear that you intended to preserve that charter?
A. We wanted to preserve that; the intention was to preserve the corporation.
Q. The Belleville and St. Louis Railway Company?
A. Our right to fall back on that charter.
Q. And here you swear the intention was to wipe out that corporation; which is true?
A. I place no importance upon that statement.
Q. Mr. Leathe, is that letter written by you?

(Showing witness a letter.)

A. That is written by me, yes, sir.
Q. Is that letter written by you?

(Showing witness another letter.)

A. That is written by me.
Q. Why did you write all those letters?
A. Let me read them; they will explain themselves.
Q. What was the reason that you addressed Mr. Bart S. Adams with a letter?
A. I notified him of a meeting to be *be* held, and as I could not attend, that was to save him the trip over here.
Q. You notified him there would be a meeting?
701 A. Yes, sir; I notified him there would be a meeting.
Q. Now, do you not state in this letter to the secretary that you had called a meeting for the next Wednesday and for him to notify the members?
A. I will have to refer to my letter-book for that.
Q. This is written by you?
A. That is written by me.

Defendant then gave the letters in evidence, as follows:

ST. LOUIS, *Aug.* 5, 1893.

Chas. W. Thomas, Secretary.

DEAR SIR: I find it will not be convenient for all of us to attend a meeting at Belleville Tuesday, as proposed, and have named the following day, Wednesday, of next week; if you have any engagement for that day which will interfere, please inform me by return mail and fix another date, I will depend upon you to notify our Belleville associates and I will do the same here verbally, will be over on the morning train.

Truly yours,

S. H. LEATHE.

ST. LOUIS, *Aug.* 4, 1893.

Bart S. Adams, Esq.

DEAR SIR: On account of business engagements which did not occur to me until this evening, I find it will be impossible for all of

us to attend a meeting at Belleville to-morrow as proposed, will arrange for a meeting early part of next week probably. Please call at the office to-morrow afternoon if down-town.

Very truly yours, S. H. LEATHE.

Q. You personally notified Mr. Edward L. Thomas, Mr. John Taylor and Mr. Needles that the meeting would take place, didn't you?

A. I did not give them official notice.

Q. You told them that there would be a meeting on a certain day?

A. And afterwards I found I could not do it; I don't remember the date.

Q. You do not remember that?

A. No, sir; we made several attempts; we made more than one attempt to call a meeting, and were unsuccessful.

Q. Now, these meetings on which these proceedings as shown, you knew of those meetings of August 9th and 11th?

A. Yes, sir; I heard of them.

702 Q. I will ask you, Mr. Leathe, if you wrote this letter to Mr. Charles W. Thomas, the secretary, on August 5th?

A. I cannot say, perhaps I can recall it if I see the letter?

Q. Now you say that you did not know anything about this resolution? That Mr. Thomas had not said anything to you about it?

A. Well, he may have said something about some resolution but not those that were passed, the resolutions shown me were not those that were passed.

Q. That is what you say?

A. Yes, sir; have you got my reply to that letter?

Q. I don't know that you replied at all; now Mr. Leathe, after you had written these two letters to the secretary dated August 5, 1893, and 9th you made this affidavit and swore to it, didn't you?

A. What is the date of these letters?

Q. August 5th, and the affidavit is dated August 17th, you can see the date of the affidavit there.

A. Yes, sir; I see it.

Q. You made that affidavit also?

A. Yes, sir, I made that; that is my signature.

Defendants then gave letters of August 5th and 9th of Charles W. Thomas in evidence.

AUGUST 5, 1893.

Mr. Samuel H. Leathe, President, &c., St. Louis.

DEAR SIR: After your departure this morning Mr. Bart S. Adams and Mr. James H. Waddock came to this office and Mr. Adams assigned upon the stock-transfer book one share of this company's stock to Mr. Waddock. I then explained to Mr. Waddock that in order to make effectual the assignment of one share which he had made to you it would be necessary to place his assignment of record, as under the law the officers of the company could recognize no assignment not entered in the stock-transfer book. After the matter

was explained to him he made a proper transfer of one share to you, leaving still the holder of one share. He also notified me that his resignation as director not having been accepted by the board was withdrawn. I took occasion to explain to Mr. Adams and Mr. Waddock the purpose of the proposed meeting, and obtained their express promises to put no obstacles in the way. They assured me that as personal favor to myself they would vote for all the resolutions I showed you this morning no matter who opposed them. I explained to them the purpose of each resolution, and believe I can guarantee that everything will go as planned, even although Mr. E. L. Thomas and Mr. Taylor might object, which I do not know of.

Yours etc., CHARLES H. THOMAS.

August 11, 1893.

Mr. Samuel H. Leathe, President.

703 August 9, 1893.

Mr. Samuel H. Leathe, President:

In accordance with your call four directors met at the company's office this morning at 10 o'clock. At my suggestion no business was transacted. The board, however, having a quorum adjourned to meet again at this place next Friday morning, 11th inst., at 10 o'clock, and directed me to notify all absent directors of its action, which I have done. From statements made by the directors individually I have no doubt that at the adjourned meeting they will proceed to the transaction of business, but so far as I could learn there was no disposition to do anything that will not agree with your views as heretofore expressed to me. I think you made a mistake in not attending the meeting as called, and hope you will be present on Friday. If you suppose that the meeting will be inharmonious I am confident that you are mistaken.

Yours very truly, CHARLES W. THOMAS, *Secretary.*

Q. You went to Mr. Holmes at East St. Louis when you were coming over here to attend a meeting on March 25th, and asked him to attend to your interests at this meeting?

A. To look after my interests, yes, sir; I knew he was acting for Mr. Adams.

Q. You paid him for those articles?

A. No, sir.

Q. He has a bill?

A. He never made a bill for it; if he charged me for it he has never collected it.

Q. But you employed him to attend to your business; you spoke to him in that way?

A. I spoke to him as Mr. Adams' attorney.

Q. Well, you spoke to him as an attorney to attend to your business?

A. I did not care to employ him as an attorney; but I knew that in looking after Mr. Adams' interests he would be looking after ours at the same time.

Q. Now, Mr. Leathe, did you ever request a transfer of the Belleville and St. Louis Railway stock?

A. A transfer to me?

Q. Yes, sir.

A. I cannot say that I did.

Q. You never did?

A. No, sir.

704 Q. You swear in this bill here that I had nearly five thousand of the stock. Did you ever ask me to assign one to you?

A. I don't think I ever knew that you had them. I understood they were in the bank that you had.

Q. They were to be issued under that contract?

A. I suppose under the contract the stock had to be issued.

Q. Now, Mr. Leathe, you say in regard to this Bank matter that you tendered back the old bonds?

A. Yes, sir.

Q. Had you not agreed with me that you would not tender back the old bonds, but would deposit new bonds in their place?

A. I had not.

Q. Will you look at that? (Handing witness a paper.)

A. That was an option which I carried out.

Q. That is your writing, is it not?

A. Yes, sir.

Q. That is signed by you?

A. Well, it is signed by me, yes, sir.

Q. And Mr. Charles Thomas witnessed it?

A. Yes, sir, that is true.

Q. What is contained in that was the arrangement, was it not?

A. That was made at the time.

Q. Now in the face of that you say that you did not agree with me to put $25,000 of new bonds in the bank?

A. I agreed on certain conditions, if this thing was carried out; that was to be contingent.

(Mr. Thomas reads the paper.)

ST. LOUIS, *March* 25, 1893.

In consideration of the conveyance to me this day of the S. W. quarter of Section 11, Township 1 North, Range 9 West, in St. Clair County, Ill., by Mary O. Thomas and Edward L. Thomas, I hereby agree to advance the necessary reasonable amount of money to purchase the fractional portion of said quarter section, owned by H. E. McDonald, being about seven acres; which sum so advanced with interest is to be charged to Edward L. Thomas and deducted from moneys or bonds, at my option, coming to him. I further agree to turn over to the First National Bank of Belleville $25,000 of the Bonds of the Railway Company, which we are now proposing to build, as soon as said bonds are issued to me, as per my previous agreement with said bank. I further agree to put said lands into said Railway and Coal enterprise, when the same shall have been duly organized as proposed. It is understood that this year's rental of

said tract to August 1, 1893, shall be retained by said Mary O.
705 Thomas, $24,000, of which $25,000 of bonds herein referred to, constitute the purchase money of the lands herein described, and belong to Mary O. Thomas, subject to the lien of the Bank, as collateral for indebtedness of E. L. Thomas to the bank. It is further understood that, should the remaining portion of the aforesaid quarter section not be purchased as contemplated, a proportionate reduction shall be made in the purchase money of said quarter section, and the bonds included in such reduction shall belong to S. H. Leathe, subject, as before, to the lien of the bank.

(Signed) SAMUEL H. LEATHE.

Witness:

(Signed) CHARLES W. THOMAS.

WITNESS: This is a copy of a paper which I made and never completed. Where is the original paper?

Q. You have it?

A. I should say in answer to that that it has never been executed and never been accepted.

Mr. KOERNER: All the records of the Belleville & St. Louis Railway Company and the Belleville City Railway Company, and the Crown Coal and Tow Company which either party may desire to use shall be considered as offered in evidence.

All the proceedings of the Crown Coal & Tow, and Belleville City Railway Company & Belleville & St. Louis Railway Company of and after March 25, 1893, are offered in evidence by the complainant.

At a special meeting of the stockholders of the Crown Coal & Tow Company, held at its office in the City of Belleville, County of St. Clair and State of Illinois, at ten o'clock a. m., March 25, A. D. 1893, in pursuance of a call of the directors there was present.

Edward L. Thomas owning	58	shares.
John T. Taylor "	48	"
Bart S. Adams "	118	"
Bart S. Adams, Edward L. Thomas & John T. Taylor, owning jointly	76	"
Total (or owners of all the capital stock)	300	shares.

On motion Mr. Edward L. Thomas was made chairman, and Bart S. Adams Sec'y of Stockholders' meeting.

Mr. John T. Taylor introduced the following resolutions and moved their adoption:

706 *Resolved*, That the Capital stock of the Crown Coal Company be increased to the sum of Two Hundred Thousand Dollars, to be divided in 2,000 shares of $100 each and that the subscription books for the increased Capital Stock be now opened for the subscription thereto.

And, further resolved, That the name of the Crown Coal Company be changed to the Crown Coal & Tow Company.

And, further resolved, That the object for which said corporation was formed be enlarged so as to include:

First. The power and authority to manufacture and sell electricity and electric light and power of all kinds.

Second. The power and authority to manufacture and sell ammonia gas, and all other products of bituminous coal.

Third. The power and authority to tow boats and barges and transport coal and other freight on the Mississippi River and its tributaries, and charge and collect toll therefor.

Fourth. The power and authority to dig, sell, and deal in sand.

Fifth. The power and authority to mine and deal in clay of all kinds and to manufacture and sell the products thereof.

Sixth. The power and authority to quarry and deal in stone and rock, which resolution was unanimously adopted by the stockholders present.

Bart S. Adams moved that the President of the Company be directed to prepare and file with the Secretary of the State and the Recorder of deeds of St. Clair County, a certificate embodying the action of the Stockholders as set forth in said resolution as provided by law.

Mr. John T. Taylor seconded the motion and it was unanimously adopted. Mr. John T. Taylor introduced the following resolution: Resolved, that the President of this company be authorized to purchase *for* Samuel H. Leathe all his coal and coal rights owned by him in St. Clair county, Illinois, and all the property lately owned by the Western Coal & Tow Company for any sum that may be agreed upon, not exceeding $191,000. Mr. Bart S. Adams seconded the motion and the resolution was unanimously adopted.

Mr. Bart S. Adams offered the following resolution and moved its adoption: Resolved, that the president and secretary of this company be authorized and directed to execute and deliver to the Mercantile Trust Company, of New York, a mortgage or deed of trust, whereby this company shall guarantee to the extent of $200,000 and no more, the payment of the principal and interest of $500,000 mortgage bonds of the Belleville City Railway Company,
such mortgage to be in such form and to contain such pro-
707 visions necessary to carry out the spirit of this resolution as
the president may be advised are right and proper, it being the intention of this company to pledge all of its property now owned and hereafter to be acquired by it, as well as its earnings now owned and hereafter to be acquired by it, as well as its earnings, easements, privileges and profits to the faithful performance of such guaranty.

Mr. Taylor seconded the motion, and it was unanimously adopted. Mr Taylor introduced the following resolution: Whereas the sum of $8,900 has been paid upon the capital stock of this company as follows:

By Edward L Thomas	$600 00
" John T. Taylor	500 00
" Bart S. Adams	6,300 00
" T. A. Meysenburg	1,500 00

Now, therefore, it is resolved that full paid certificates be issued to the above named stockholders or their assigns for such share and fractions of shares as would be paid by the respective amount above mentioned as follows:

By Edward L. Thomas	11
" John T. Taylor	10
" Bart S. Adams	68
Total	89

And that said stock be hereafter fully paid up stock of the company, and that all other stock be subject to calls until it is fully paid up; this resolution being based upon doubts which have arisen as to whether any other of the stock of this company other than the $8,900 above mentioned is actually paid up stock, and because it is desirable that all of said stock should be fully paid up.

And now Mr. Samuel H. Leathe appeared before the meeting and proposed to subscribe for the increased capital stock of the company amounting to $170,000, and he having during the progress of the meeting acquired by assessment all of the unpaid capital stock as decided in the foregoing resolution, he proposed to pay the $170,000 of the capital stock to be by him subscribed and the $21,100 held by him by assignment by selling, conveying, transferring to this company all the coal and coal rights owned by him in St. Clair county, Illinois, and all the property lately owned by the Western Coal & Tow Company which he had acquired and a list of which he submitted.

Mr. Taylor moved that Mr. Leathe's proposition be accepted, and that he be permitted to subscribe for the $170,000 increased capital stock of the company of the property mentioned in
708 his proposition, and that inasmuch as the property so to be conveyed is amply worth the sum of $191,100, the capital stock of the company upon the execution and delivery of such conveyance to be declared to be fully paid up and subject to no further calls or assessments for any purpose whatever. Mr. Adams seconded the motion and it was unanimously adopted. There being no further business before the meeting it was adjourned.

EDWARD L. THOMAS, *Chairman.*

Attest:

BART S. ADAMS, *Sec'y.*

We, the undersigned, being all the stockholders of the Crown Coal Company, hereby ratify and confirm all the proceedings here above set forth.

BART. S. ADAMS.
EDWARD L. THOMAS.
JOHN T. TAYLOR.

March 25, 1893.

I, Samuel H. Leathe, hereby assign and transfer to the following named persons the number of shares of the capital stock of the Crown Coal and Tow Company, set opposite their respective names:

To Edward L. Thomas	298	shares
To John T. Taylor	42 4/5	"
To Bartlett S. Adams	129	"
To Lucien M. Chipley	313 1/5	"
To Henry M. Needles	8	"
To Charles W. Thomas	100	"

SAM'L H. LEATHE.

Dated, March 22, 1893.

At a meeting of the stockholders of the Crown Coal and Tow Company, held at its office in the city of Belleville on the twenty-ninth day of March, A. D 1893, in pursuance of a call of the directors, all the stockholders being present, the following proceedings were had:

Mr. Samuel H. Leathe was made president, and Mr. Charles W. Thomas secretary of the meeting. Mr. Adams introduced the following resolution:

Resolved, That the number of directors of the Crown Coal and Tow Company be increased to seven. Mr. Taylor moved that the resolution be adopted. Mr. Needles seconded the motion, and it was unanimously adopted.

Mr. Adams moved that the president of the company be directed to make and file the proper certificates with the Secretary of the State and recorder of St. Clair County as provided by law. Mr. Taylor seconded the motion, and it was unanimously adopted.

709 Mr. Samuel H. Leathe then assigned one share of the capital stock of the company to Samuel Leathe, and one share to James H. Waddock, as follows:

I hereby assign and transfer to Samuel Leathe and James H. Waddock, each one share of the capital stock of the Crown Coal and Tow Company.

SAMUEL H. LEATHE.

March 29, 1893.

The stockholders then proceeded with the election of directors, to hold office until the next annual meeting of the stockholders and until their successors are elected. And the following stockholders were unanimously elected:

Samuel H. Leathe, Lucien M. Chipley, Bartlett S. Adams, Edward L. Thomas, Samuel Leathe, John T. Taylor and James H. Waddock, and the meeting adjourned.

CHARLES W. THOMAS, *Sec'y.*

SAML. H. LEATHE, *Prest.*

We hereby ratify and confirm the foregoing proceedings of March 29, 1893. Saml. H. Leathe, L. M. Chipley, Bart S. Adams,

Edward L. Thomas, Henry M. Needles, James H. Waddock, Saml. Leathe, John T. Taylor, Charles W. Thomas.

At a meeting of the directors of the Crown Coal & Tow Company, held at its office in the city of Belleville immediately after the adjournment of the stockholders' meeting on March 29, 1893, all the directors being present, the following proceedings were had:

The board then proceeded to the election of officers, and the following were chosen: Lucien M. Chipley, President; Samuel H. Leathe, Vice-President and Treasurer; James H. Waddock, Secretary.

Mr. Samuel H. Leathe offered the following resolution:

Resolved, That the General Manager of the company, who shall have general management and control of the business of this company, subject to the orders of the President and Board of Directors. Mr. Adams moved that the resolution be adopted. Mr. Waddock seconded the motion, and it was unanimously adopted. Mr. L. M. Chipley was made General Manager, all voting aye except Edward L. Thomas, who voted no.

Mr. Leathe, upon whose motion Mr. Chipley was made General Manager, moved to reconsider the motion and the vote by which the motion was carried, and the office of General Manager was left to be filled at some future meeting, and the board adjourned.

L. M. CHIPLEY, *President.*

JAMES H. WADDOCK, *Sec'y.*

710 At a meeting of the Directors of the Crown Coal & Tow Company, held at its office in the city of Belleville on the 26th day of August, A. D. 1893, in pursuance of a call of the President, all of the Directors being present, Mr. L. M. Chipley in the chair and Saml. Leathe, Sec'y. *pro tem.*, the following proceedings were had:

The President presented the resignation of Mr. James H. Waddock as Secretary and Director, dated August 1, 1893, and Mr. S. H. Leathe moved that it be accepted; motion was seconded by Samuel Leathe, and being put was carried by the following vote:

Ayes—L. M. Chipley, Samuel H. Leathe, Bart S. Adams, Samuel Leathe. No—Edward L. Thomas. Mr. Taylor not voting.

Mr. Samuel Leathe moved that Mr. Fred B. Merrils, of Belleville be elected as director to fill the vacancy occasioned by the resignation of Mr. James H. Waddock. This motion, seconded by Mr. John T. Taylor, was put, and the following Directors voting in favor of Mr. Fred B. Merrils:

Ayes—L. M. Chipley, S. H. Leathe, John T. Taylor, Bart S. Adams, Samuel Leathe.

Mr. Edward L. Thomas voted no. The President declared Mr. Merrils duly elected. Mr. Edward L. Thomas presented the following protest, and moved that it be spread upon the records:

Whereas, at the last meeting of the Board of Directors of this company it was agreed that Bartlett S. Adams & John T. Taylor

should remain in the position that they then occupied, and manage the coal and river business of this company, and whereas, the president and treasurer have taken it upon themselves without a meeting of this board to discharge said Taylor and prevent said Adams from performing his duties, and whereas, we have been unable to learn the status of the company by reason of failure of said president and treasurer to render to us a statement of the affairs of said company upon request by us.

Therefore, we the undersigned directors of this company protest against the action of the said president and treasurer as above set forth, and ask that this protest may be spread upon the records of this company.

Signed by EDWARD L. THOMAS.
JAMES H. WADDOCK.
JOHN T. TAYLOR.

Dated Aug. 26th, 1893.
Copy.

711 Which motion was carried by the following vote:

Ayes—S. H. Leathe,
" —John T. Taylor,
" —B. S. Adams,
" —E. L. Thomas,
" —Sam'l Leathe.
Mr. Chipley voting no.

Mr. S. H. Leathe presents the following resolution:

Resolved, That the treasurer of this company be and he is hereby authorized to receive and give receipt for all moneys due and payable to this company from any source whatever and to endorse checks and drafts in its name and on its behalf, and full discharge for the same to give. This resolution was unanimously adopted. Mr. Edward L. Thomas and Mr. John Taylor then tendered their resignation as directors; it being moved and seconded that the resignations be laid upon the table it was carried by the following vote:

Ayes—L. M. Chipley,
" —S. H. Leathe,
" —B. S. Adams,
" —Samuel Leathe.

Mr. S. H. Leathe moved that the president select a suitable place for holding meetings and keeping the books. Which was unanimously adopted. Mr. Bart S. Adams moved that Sam'l Leathe be elected secretary of the company and Mr. L. M. Chipley seconded the motion, and Sam'l Leathe was unanimously elected secretary; the meeting then adjourned subject to the call of the president.

L. M. CHIPLEY, *President.*

SAM'L LEATHE, *Sec'y.*

BELLEVILLE, ILL., *Sept.* 1, 1893.

For value received I hereby assign to Mary O. Thomas Three Hundred Shares of the capital stock of the Crown Coal & Tow Company.

EDWARD L. THOMAS.

At a meeting of the Board of Directors of the Crown Coal & Tow Company held at its office in the City of Belleville, Ill., on the fourth day of September, A. D. 1893, at 10 o'clock A. M. in pursuance of a call of the president, the following directors being present. L. M. Chipley in the chair, S. H. Leathe, Fred B. Merrils, Edward L. Thomas, John T. Taylor, Sam'l Leathe, the following proceedings were had. Mr. S. H. Leathe offered the following resolution:

712 *Resolved*, That the resignation of Mr. Edward L. Thomas and Mr. John T. Taylor as directors of the Crown Coal & Tow Company be taken from the table and accepted, which resolution being seconded by Mr. L. M. Chipley, was passed by the following vote:

Ayes—L. M. Chipley,
" —S. H. Leathe,
" —Fred. B. Merrills,
" —Samuel Leathe.

Mr. S. H. Leathe then made a motion to adjourn and meet Sept. 5th at 9:30 A. M. at the office of Fred. B. Merrills, which motion, being seconded by Samuel Leathe, was passed by the following vote:

Ayes—L. M. Chipley,
" —S. H. Leathe.
" —Fred. B. Merrills,
" —Sam'l Leathe.

L. M. CHIPLEY, *Prest.*

SAM'L LEATHE, *Sec'y.*

In pursuance of adjournment, the board met September 5, 1895, at 9:30 A. M. at the office of Fred. B. Merrills, which place had been selected by the president as the office of the company. Present, the president, Lucien M. Chipley, and Messrs. Samuel H. Leathe, Fred B. Merrills and Sam'l Leathe. No business being brought before the meeting, on motion of Mr. Merrills the board adjourned.

SAM'L LEATHE, *Secretary.*

Office of the Crown Coal and Tow Company.

BELLEVILLE, ILL., *Oct.* 12, 1893.

At a meeting of the board of directors of the company held at its office in the city of Belleville, pursuant to the following notice, a copy of which was served on Lucien M. Chipley, a director and the president of its company, on the 10th day of October, 1893, to wit.

BELLEVILLE, ILL., *Oct.* 10, 1893.

Lucien M. Chipley, Director of the Crown Coal and Tow Company.

SIR: You are hereby notified that a meeting of the board of directors of the Crown Coal and Tow Company will be held at the office of the said company (office of Fred. B. Merrills) in the city of Belleville, Ill., on Thursday, October 12, A. D. 1893, at 9

713 o'clock A. M. of said day, at which you are requested to be present.

Signed Bart. S. Adams, Sam'l H. Leathe, Fred. B. Merrills.

Directors of said Crown Coal and Tow Company, constituting a majority of the board of directors of said company. There were present the vice-president, Sam'l H. Leathe, and Messrs. Bart. S. Adams, Sam'l Leathe, Fred. B. Merrills; absent, Lucien M. Chipley, president. The vice-president called the meeting to order, and Mr. Adams offered the following resolution:

Resolved, That the interests of this company require the president, Mr. Lucien M. Chipley, be removed from the office of president; and

Resolved, That the said Lucien M. Chipley be and is hereby removed from the office of president; and

Resolved, That the secretary be directed to furnish Mr. Chipley a copy of these resolutions.

Mr. Adams moved the adoption of these resolutions, which motion was seconded by Sam'l Leathe, and, being put to a vote, was adopted by the following vote:

Ayes.—Messrs. Samuel H. Leathe, Fred B. Merrills, Bart S. Adams and Sam'l Leathe. No-s—none.

The Vice-president in the chair declared the resolution adopted, Mr. Samuel H. Leathe the Vice-president then vacated the chair and on motion of Mr. Sam'l Leathe, Mr. Adams was elected chairman *pro temp.* of the meeting, Mr. Samuel H. Leathe then offered his resignation as Vice-president of the Company which was accepted.

Mr. Merrils moved that a president be now elected to fill the unexpired term of Lucien M. Chipley removed from that office, which motion was unanimously adopted. Mr. Sam'l H. Leathe was then put in noination for the office of President to fill said vacancy, and a ballot was had which resulted as follows:

For Samuel H. Leathe four votes. No other votes were cast.

The Chairman declared Mr. Sam'l H. Leathe elected as President to fill the unexpired term of Lucien M. Chipley removed. Mr. Samuel H. Leathe, President, then resumed the Chair. On motion of Mr. Adams, the Board adjourned.

SAM'L LEATHE, *Sec'y.*

At a meeting of the stockholders of the Belleville City Railway Company held at the office of the Company in the City of Belleville. On the 25th day of March A. D. 1893, the following proceedings were had: Present Charles W. Thomas owning 4996, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one
714 share, and Bartlett S. Adams, one share; Mr. Adams was made President and C. W. Thomas Secretary. The following named persons were then unanimously elected Directors of the Company. Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor and Bartlett S. Adams. And the meeting adjourned.

CHARLES W. THOMAS, *Secretary.*

BART. S. ADAMS, *Pres't of Meeting.*

At a meeting of the Directors of the Belleville City Railway Company held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25th, 1893, the

following proceedings were had, all the Directors being present; Mr. Bartlett S. Adams was elected President of the Company and Mr. Charles W. Thomas, Secretary.

Mr. Taylor introduced the following resolution and moved its adoption:

Resolved, That a call of one hundred per cent. be made upon the Capital Stock of this Company payable on or before May 1st, 1893; and that the Secretary be directed to give written notice of this call to all of the stockholders within twenty days. Mr. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel H. Leathe now appeared before the board and proposed to sell and convey to this company for the sum of 499,500 dollars certain property described and referred to in his deed to the company of this date, which is produced but which is not delivered.

Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give the company credit on said purchase money for any amount which he may hereafter owe as a stockholder of the company on account of calls made upon any of its stock he may hereafter acquire, and may credit on said stock calls the value of the services he may hereafter perform in floating this company's bonds, and also the indebtedness due him from the company as the purchase price of said property. Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the company, 4,995 shares of the capital stock of the company, subject to the calls made thereon by Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as a full payment of the call of one hundred per cent. made at this meeting upon his 4,995 shares of the stock of this company, upon the condition that he float the $500,000 of bonds of this company heretofore authorized to be issued, any of such bonds that he sells to net this company such a price as may be hereafter agreed upon between him and the board of directors of this company, and
715 all the bonds that he takes or that may be paid out for property or prior indebtedness of the company to be accounted for by him at par, to the end that the railway of this company may be at once constructed and operated from some point within the original city of Belleville to the Mississippi river, and upon the further condition that Mr. Leathe protects this company from any decree foreclosing the mortgage, to secure said bonds, until one year after its said railway is in operation, and that Mr. Leathe be requested to sign the records of the proceedings of this board at the foot of this resolution as an acceptance by him of its terms and an agreement to perform its conditions. Mr. Adams seconded the motion, and it was unanimously adopted. I accept the terms of the foregoing resolution.

SAM'L H. LEATHE.

And the board adjourned to meet subject to the call of the president.

CHARLES W. THOMAS, *Secretary.*

BART. S. ADAMS, *Pres't.*

At a meeting of the stockholders of the Belleville City Railway Company held at its office in the city of Belleville, on the 25th day of March, immediately after the board adjourned the following proceedings were had: Present all the stockholders.

Mr. Samuel H. Leathe was made chairman of the meeting and Charles W. Thomas was made secretary. Mr. Chipley offered the following by-law and moved its adoption: XVII.

The Board of Directors of this company shall hereafter consist of seven stockholders. Mr. Adams seconded the motion and the by-law was unanimously adopted. H. M. Needles, E. L. Thomas, Bartlett S. Adams, John T. Taylor and Charles W. Thomas offered their resignation as directors, and their resignation was accepted. The stockholders then proceeded to the election of seven directors. Mr. Adams moved that two tellers be appointed by the president, to take and count the ballots of the stockholders and Mr. Adams and Mr. Taylor were appointed tellers. Upon inspection of the ballots, the tellers reported that the following named persons had received the number of votes set opposite their respective names. Edward L. Thomas, 5000 votes, Bartlett S. Adams, 5000 votes, John T. Taylor, 5000 votes, Lucien M. Chipley, 5000 votes, Samuel H. Leathe, 5000 votes, Samuel Leathe, 5000 votes, James H. Waddock, 5000 votes. On motion Messrs. Thomas, Adams, Taylor, Chipley, Samuel H. Leathe, Samuel Leathe and Waddock were declared to be directors of the company until the annual meeting of the stockholders. And the meeting adjourned.

CHARLES W. THOMAS, *Secretary.*

SAMUEL H. LEATHE, *Chairman.*

716 We the undersigned, being all of the stockholders of the said company, hereby ratify and confirm all the proceedings set forth in this record book.

SAMUEL H. LEATHE.
L. M. SHIPLEY.
EDWARD L. THOMAS.
BART. S. ADAMS.
JOHN T. TAYLOR.
HENRY M. NEEDLES.
SAMUEL LEATHE.
CHARLES W. THOMAS.
JAS. H. WADDOCK.

March 25, 1893.

At the meeting of the directors of the Belleville City Railway Company held at its office in the City of Belleville on the 25th day of March A. D. 1893, after the adjournment of the foregoing stockholders' meeting, the following proceedings were had. All the directors were present. The following persons were unanimously elected to the several offices of the company. Samuel H. Leathe, President

and Treasurer; Lucian M. Chipley, Vice-President; Charles W. Thomas, Secretary.

And the board adjourned.

CHARLES W. THOMAS, *Secretary.*
SAMUEL H. LEATHE, *President.*
L. M. CHIPLEY, *Director.*
EDWARD L. THOMAS, *Director.*
BART S. ADAMS, *Director.*
JOHN T. TAYLOR, *Director.*
SAMUEL LEATHE, *Director.*
JAS. H. WADDOCK, *Director.*

VOLUME II.

WEDNESDAY, *August 9th*, 1893—10 o'clock a. m.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office at and in pursuance of a call of the president whereof all the directors had notice, on Wednesday, August 9th, 1893, at 10 o'clock A. M., the following proceedings were had. In the absence of the president and vice-president Mr. Bart S. Adams was made president of the meeting. Present—Thomas, Adams, Waddock and Taylor. Mr. E. L. Thomas moved that inasmuch as important business was to be transacted by the board and it was for the best interest of the company that all directors should have an opportunity to be present, that the board adjourn
717 to meet again at the company's office on Friday, August 11th, 1893, at 10 o'clock A. M., that the secretary be directed to notify all the absent directors thereof. Mr. Taylor seconded the motion, and it was unanimously adopted, and the board adjourned in pursuance of said motion.

CHARLES W. THOMAS, *Secretary.*

FRIDAY, *Aug.* 11, 1893.

At a meeting of the directors of the Belleville City Railway Company, held at its office in the City of Belleville, on Friday, August 11, 1893, in pursuance of the last adjournment, the following proceedings were had: Present—Thomas, Adams, Waddock and Taylor. Mr. Adams, in the absence of the president and vice-president was made president *pro tem.*, for the purpose of this meeting; the secretary then presented to the board the following report: To the board of directors said company respectfully reports that the president of the company has caused 500 bonds of the company to be engraved and signed by the president and secretary and sealed with the seal of the company, representing an indebtedness of $500,000 upon the form set out in the annexed mortgage or deed of trust, and that the secretary has caused to be prepared for execution, a mortgage or deed of trust, a copy of which, omitting signatures, is hereto appended.

CHARLES W. THOMAS, *Secretary.*

August 11, 1893.

Mortgage appended to said report.

Mr. Taylor then introduced the following resolution, and moved its adoption:

Resolved, That the acts and doings of the president and secretary, as set out in the foregoing report spread upon the records of the company, be ratified and approved by the board.

Mr. Waddock seconded the motion, and it was approved by an unanimous vote.

Mr. Thomas then introduced the following resolution, and moved its adoption:

Resolved, That the president and secretary be directed to execute the mortgage or deed set out in the report of the secretary this day made to the board; and to deliver the same, with the $500,000 of the bonds of this company already executed to the St. Louis Trust Company, trustee, named in said mortgage, to be dealt with as agreed between this company and said trust company.

Mr. Taylor seconded the motion, and the resolution was adopted.

Mr. Waddock introduced the following resolution, and moved its adoption:

718 *Resolved*, That the treasurer of this company be directed to procure and receive from the St. Louis Trust Company the $500,000 of the bonds of this company, and to deliver them to Samuel H. Leathe, individually, under his contract with this company to be handled and used by him as therein provided.

Mr. Thomas seconded the motion, and the resolution was adopted.

Mr. Taylor introduced the following resolution, and moved its adoption:

Resolved, That the treasurer be directed to pay to Edward C. Rice, out of the first money coming into his hands as the proceeds of the company's bonds, the sum of $1,500 in payment of amount advanced to this company by said Rice for the purpose of purchasing a right of way along the St. Clair County turnpike; the said Rice to accept said sum as in full of all his claims and demands upon or against this company, and that the secretary be directed to inform Mr. Rice that this company acknowledges the said indebtedness.

Mr. Waddock seconded the motion, and the resolution was adopted.

Mr. Thomas introduced the following resolution, and moved its adoption.

Resolved, That Charles W. Thomas be allowed and paid the sum of five hundred dollars for his services to this company prior to the 25th of March, 1893.

Mr. Waddock seconded the motion, and the resolution was unanimously adopted.

Then Mr. Charles W. Thomas stated to the board that he desired that the said sum of $500 be applied in payment of the calls on five shares of the company stock now held one share each by himself, Henry M. Needles, Bartlett S. Adams, John T. Taylor, and Edward L. Thomas.

Mr. Taylor moved that Mr. Thomas' request be granted. Mr. Waddock seconded the motion, and it was carried.

Mr. Taylor moved that the president and secretary be directed to issue certificates of stock to the stockholders of record. Mr. Thomas seconded the motion, and it was adopted.

On motion the board adjourned to meet on Monday, August 21, 1893, at 10 o'clock A. M.

Charles W. Thomas, Secretary, Bart S. Adams, President *pro temp.*

Aug. 21, 1893.

At a meeting of the board of directors of the Belleville City Railway Company, held at the company's office on the 21st day of
719 August, A. D. 1893, at 10 o'clock A. M., in pursuance of the last adjournment, the following proceedings were had: Present—Adams, Thomas, Waddock and Taylor. The minutes of the two last preceding meetings were read and approved. Mr. Adams having been made president *pro temp.* of the meeting, Mr. Taylor moved that the board adjourn to meet at the company's office on Monday, August 28, 1893, at 10 o'clock, A. M. Mr. Waddock seconded the motion, and it was adopted, and the board accordingly adjourned.

Mr. Charles Thomas, secretary; Bart S. Adams, president *pro temp.*

AUGUST 26, 1893.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office on the 26th day of August, A. D. 1893, at 10 o'clock A. M., in pursuance of a call of the president, whereof all of the directors had due notice, there were present Samuel H. Leathe, L. M. Chipley, E. L. Thomas, J. H. Waddock, John T. Taylor and Samuel Leathe. Absent, Bart S. Adams. On motion the board adjourned to meet at 12 o'clock noon of this day.

CHARLES W. THOMAS, *Secretary.*

At 12 o'clock noon the board reconvened, all the directors being present. The president presented the resignation of Mr. Waddock as a director. Mr. Chipley moved that the resignation be accepted. Mr. Samuel Leathe seconded the motion, and it was carried by the following vote:

Ayes—Samuel H. Leathe, Chipley, Thomas, Adams and Samuel Leathe. Noes, none. Refusing to vote, Taylor, Waddock, and the resignation was accepted. Samuel Leathe moved that Fred B. Merrills be chosen to fill the vacancy caused by the resignation of Mr. Waddock. Mr. Chipley seconded the motion, and it was carried by the following vote:

Ayes—Chipley, Samuel Leathe, Adams and Samuel H. Leathe. Noes—Thomas. Refusing to vote—Taylor.

And Mr. Merrills was declared elected as director. Mr. Chipley then introduced the following resolution and moved its adoption:

Resolved, That inasmuch as a full board was not present at the

meetings of the board held August 9th, 11th and 21st inst., the proceedings of those meetings are hereby rescinded. Mr. Samuel Leathe seconded the motion, and the resolution was adopted by the following vote:

Ayes—Chipley, Adams, Samuel Leathe and Samuel H. Leathe.
Noes—Thomas and Taylor.

Mr. Chipley moved that the board adjourn. Mr. Samuel
720 Leathe seconded the motion. Pending the motion Mr. Thomas and Mr. Taylor presented their written resignation to the secretary, but the board adjourned without action on said resignations.

CHARLES W. THOMAS, *Secretary*.

At a meeting of the board of directors of the Belleville City Railway Company held at the company's office, to wit: the office of Charles W. Thomas, on the fourth day of September, A. D. 1893, at nine o'clock A. M. in pursuance of a call of the president whereof all the directors had due notice of the time and place of said meeting. Present thereat: Samuel H. Leathe, President; Charles W. Thomas, Secretary; Messrs. Chipley, Samuel Leathe and Merrills. The following proceedings were had. The minutes of the last meeting were read, whereupon Samuel Leathe offered the following resolution and moved its adoption. I move that the minutes of the proceedings of this board held August 26, 1893, just read, be amended so as to show in conformity with the facts, that the resignation of Mr. Waddock as a director of the company, presented by the president, bore the date of August 1, A. D. 1893. Mr. Chipley presented the following communication to the board of directors: Having resigned as a director of the Belleville City Railway Company, I am at present simply a stockholder, and only in that capacity. Signed. Edward L. Thomas.

Mr. Chipley then moved the adoption of the following resolution: *Resolved*, That the resignation of E. L. Thomas and John T. Taylor as directors of this company, tendered August 26, 1893, be accepted. Samuel Leathe seconded the motion, and it prevailed. Thereupon the president submitted the following report. I desire to report that in obedience to the resolution of the stockholders of this company at their meeting March 11, 1893, I have caused 500 bonds of this company, each of the denomination of one thousand dollars, to be engraved and that said bonds have been signed by the president and secretary and the seal of the company had been placed thereon. A mortgage deed of trust has also been prepared and is now ready for execution. That date of the bonds is July 1, 1893, and to each one are attached coupons for payment of interest semi-annually at five per cent. The bonds are payable twenty years after date. A copy of mortgages is recorded in the minute book of this company on pages four and nineteen, inclusive. It has been found more convenient to name the St. Louis Trust Company as trustee, instead of the Mercantile Trust Company of New York as originally intended, and the St. Louis Trust Company has agreed to accept the trust. Signed. Samuel H. Leathe.

721 Thereupon Mr. Merrills presented the following resolution and moved its adoption:

Resolved, That the action of the president and secretary, as set forth in the report just read, be and the same is hereby approved.

Mr. Chipley seconded the motion, and it was adopted.

Mr. Samuel Leathe moved the adoption of the following resolution:

Resolved, That the president and secretary be directed to execute the mortgage and deliver the same to the trustee therein named.

Mr. Chipley seconded the motion, and it prevailed.

Mr. Chipley offered the following resolution, and moved its adoption:

Resolved, That the 500 bonds of this company, after execution and delivery of said mortgage, be delivered to Mr. Samuel H. Leathe, the president and treasurer of this company.

Mr. Samuel H. Leathe seconded the motion, and it prevailed.

Thereupon Mr. Charles W. Thomas presented the following communication:

BELLEVILLE, ILL., *September* 4, 1893.

To the Board of Directors of the Belleville City Railway Company:

I hereby peremptorily and unconditionally resign the office of secretary of this company.

CHARLES W. THOMAS.

Whereupon Mr. Thomas vacated the position, and upon motion of Mr. Chipley, Mr. Fred B. Merrills was chosen as secretary *pro tem.*

Mr. Chipley moved that the board do now adjourn, to meet to-morrow morning, September 5th, at 10 o'clock, at the office of Mr. Fred B. Merrills, in Belleville, Ill. The motion prevailed and the board stood adjourned.

FRED. B. MERRILLS,
Secretary pro tem.

A meeting of the board of directors, pursuant to the adjournment of September 5, 1893. Present: the president, Mr. Samuel H. Leathe, Mr. Lucien M. Chipley, Mr. Fred. B. Merrills, and Samuel Leathe. The president having called the meeting to order, Mr. Merrills moved that the board proceed to the election of a secretary, which motion was seconded by Mr. L. M. Chipley, and was unanimously adopted. Thereupon Mr. Chipley nominated for the office of secretary, to fill the unexpired term of Mr. Charles W. Thomas, who resigned September the fourth, 1893, Mr. Samuel Leathe. The president ordered the ballots to be taken, and
722 appointed Mr. Merrills as teller, who reported that four ballots were cast, all in favor of Mr. Samuel Leathe. The president therefore declared Mr. Samuel Leathe elected secretary, to fill the vacancy occasioned by the resignation of Charles W. Thomas. On motion, the board adjourned.

SAMUEL LEATHE, *Secretary.*

BELLEVILLE, ILL., *March* 25, 1893.

At a meeting of the board of directors of the Belleville & St. Louis Railroad Company the following proceedings were had:

Present: Bart S. Adams, John T. Taylor, Alpheus Bohlen and Henry M. Needles. Meeting called to order by John T. Taylor, vice-president, in the absence of John S. Hill, president.

The resignation of John S. Hill as president and director of said company is presented and on motion is accepted by the board.

On motion the board proceeded to fill the vacancy in said board and Edward L. Thomas was elected to fill the vacancy. On motion Edward L. Thomas was elected president of said company.

There being no further business the board adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *March* 25, 1893.

At a meeting of the stock holders of the Belleville & St. Louis Railway Company the following proceedings were had:

Bart S. Adams owner of	62	shares	
John T. Taylor " "	50	"	
Henry M. Needles " "	1	"	
Alpheus Bohlen " "	1	"	
Edward L. Thomas " "	876	"	
Josephine Johnson by proxy	10	"	
Total	1000	"	
and Edward L. Thomas owner of	3980	"	New Stock
Henry M. Needles " "	20	"	" "
Total	5000	"	Stock.

On motion Bart. S. Adams is elected chairman of the stockholders' meeting and Henry M. Needles, secretary.

Edward L. Thomas offered the following resolution:

"*Be it resolved*, That the president and secretary of this company be authorized and directed to transfer and deed to Samuel H. Leathe all of the property, rights of way, easements and grading of this company as per deed presented, and bearing date this 25th day of March, 1893."

Which resolution was unanimously adopted.

723 There being no further business before the meeting, meeting thereupon adjourned.

BART. S. ADAMS, *Prest.*

HENRY M. NEEDLES, *Secretary.*

We, the undersigned stockholders of the Belleville & St. Louis Railway Company, being present, hereby confirm the action of the

565

stockholders, meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ill., March 25, 1893.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS,
Proxy.

ST. LOUIS, MO., *October* 24, 1892.

I, the undersigned, Josephine Johnson, do hereby constitute and appoint Edward L. Thomas, as my agent, and in my stead to cast at a meeting of the stockholders of the Belleville & St. Louis Railway Company, to be held at Belleville, Illinois, on Thursday, October 27, 1892, such votes as I might or could cast were I present, as owner of ten shares of stock in said company. And I hereby authorize him to vote such stock in favor of the increase of the capital stock of said company to $500,000, and issuing bonds therefor at such rates of interest, as the stockholders may agree upon.

I hereby consent to such increase of capital stock, and to the making of such a loan.

This proxy is given upon the express condition that the said Edward L. Thomas shall, as soon as said Thomas succeeds in obtaining capital to build said railway, he shall return to me the amount that I have invested, with interest from date of investment at six per cent. per annum, whereupon I will transfer to him the stock and bonds of said company now held by me.

Witness my hand and seal, this 24th day of October, A. D. 1892.

JOSEPHINE JOHNSON. [SEAL.]

We, the undersigned, stockholders of the Belleville and St. Louis Railway Company, being present hereby confirm the action
724 of the stockholders' meeting this day held, and consent to the execution of the deed therein mentioned.

Belleville, Ills., March 25, 1893.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS,
Proxy.

BELLEVILLE, ILL., *March* 27, 1893.

Office of the Belleville and St. Louis Railway Company.

At the regular annual meeting of the stockholders of the Belleville and St. Louis Railway Company, held at the office of said company this 27th day of March, 1893, the following proceedings were had:

The meeting was called to order by Edward L. Thomas, president of said company.

Present:	Edward L. Thomas, owner of	4,856	shares.
"	Alpheus Boling, " "	1	"
"	Henry M. Needles, " "	1	"
"	Mrs. Josephine Johnson, by proxy, owner of	10	"
	Total shares represented	4,888	"

On motion of Alpheus Boling, Mr. Edward L. Thomas was made chairman of the meeting, and on motion of Alpheus Boling, Henry M. Needles was made secretary of the meeting.

The minutes of the last meeting were read and approved.

The meeting then proceeded to the election of two directors for the ensuing two years to fill the vacancy occasioned by the expiration of the terms of John T. Taylor and Edward L. Thomas.

Henry M. Needles being appointed teller, reported the following vote: Edward L. Thomas received 4,888 votes and John T. Taylor received 4,888 votes, and they were declared elected directors for the ensuing two years under the by-laws.

There being no further business, the meeting thereupon adjourned.

EDWARD L. THOMAS, *Chairman.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *April* 3, 1893.

Office of the Belleville and St. Louis Railway Company.

At the regular annual meeting of the board of directors of
725 the Belleville and St. Louis Railway Company the following proceedings were had: Present: Edward L. Thomas, Henry M. Needles and Alpheus Boling.

On motion the board proceeded to organize.

Edward L. Thomas was elected president, Alpheus Boling was elected vice-president, and Henry M. Needles, secretary, and Bartlett S. Adams, treasurer, for the ensuing year.

There being no further business, the meeting adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILL., *August* 21, 1893.

Office of the Belleville and St. Louis Railway Company.

At a meeting of the board of directors of the Belleville and St. Louis Railway Company, held at the office of the company, August 21, 1893, at 2 o'clock, P M., the following proceedings were had.

Present—all of the directors.

Henry M. Needles, secretary of the company, reported to the board that during the presidency of John T. Taylor, no action was taken under a resoluton of this board, adopted September 10, 1891, respecting the settlement of affairs between this company, Edward L. Thomas and the heirs of W. A. Adams, and that since said Hill ceased to be president of the company and the said secretary had stated accounts between Edward L. Thomas and the company, and between Ellen S. Adams and Bart S. Adams, heirs of W. A. Adams, deceased, and this company reports to the board that there is due from this company to said Ellen S. Adams and Bart S. Adams the sum of $27,462.65.

That the said indebtedness is composed of the following items:

Money advanced this company by W. A. Adams in his life-time between the first day of September, 1890, and first day of April, 1891, for the purpose of constructing the company's railway, $23,674.72. Interest upon the same at the rate of 6% per annum, taking the average time during which the said money was advanced, and up to the 21st day of August, 1893, being in round numbers and omitting odd days (the interest for which was waived), the sum of $3,787.93. Total amount due being upon this day the sum of $27,462.65. And he further reports that upon stating an account between this road and Edward L. Thomas, he found to be due to said Thomas the sum of $52,022.23, which is composed of the items contained in the itemized account herewith submitted to the board and made a part of this report. Mr. Taylor moved that the report of the secretary be accepted and approved, and that the secretary of the company be directed to execute and deliver to Ellen S.
726 Adams and Bart S. Adams the promissory note of the company for the said sum of $27,462.65, due one day after date, bearing interest at the rate of six per cent. from maturity until paid, and that the secretary be further directed to execute and deliver to Edward L. Thomas the promissory note of the company for the said sum of $53,022.23, due one day after date and bearing interest at the rate of six per cent. from maturity.

Mr. Boling seconded the motion and Edward L. Thomas and Bart S. Adams refusing to vote, the motion was adopted by vote of all the other directors.

The board thereupon adjourned.

EDWARD L. THOMAS, *President.*

HENRY M. NEEDLES, *Secretary.*

BELLEVILLE, ILLINOIS, *September* 8, 1893.

Office of the Belleville & St. Louis Railway Company.

At a meeting of the board of directors pursuant to a call of the president, there were present, Edward L. Thomas, John T. Taylor and Henry M. Needles.

The president called the meeting to order. The president then reported that he in his individual capacity had brought suit against the company on a note of the company whereupon John T. Taylor offered the following resolution. "*Resolved*, That the secretary of the company notify Samuel H. Leathe of the bringing of said suit and inform him that this company will permit him to defend the same in its name if he desires so to do," and moved its adoption.

Being seconded by Mr. Needles, it was unanimously adopted. The president then submitted the following "to the board of directors of the Belleville & St. Louis Railway Company."

GENTLEMEN: As shown by your records, a sale of the property of this company was made March 25, 1893, the consideration for such sale being an agreement to pay the debts of this company by Mr. Samuel H. Leathe. Mr. Leathe conveyed the property to the Belleville City Railway Company, but he has not as yet paid any portion of the debts of this company. The Belleville City Railway Company intends to mortgage said property, and as the debts of this company are due and according to the terms of the sale Mr. Leathe ought to have paid by him, acting for this company and to protect its creditors, I brought in the name of this company a bill for a vendor's lien which is now pending in the Circuit Court of St. Clair County, Illinois.

Respectfully, EDWARD L. THOMAS.

727 Whereupon Henry M. Needles offered the following resolution:

"Whereas it appears to this board that the president, Edward L. Thomas has instituted a suit for a vendor's lien to protect the creditors of this company and to secure to them the amounts due them, Be it resolved by this board that the action of the said president in that respect be and the same is hereby approved, and that he be and is hereby directed to push said suit to successful issue" and moved its adoption, and being seconded by John T. Taylor it was unanimously adopted.

The president then presented his resignation as president of said company, which on motion was unanimously accepted. On motion of Edward L. Thomas seconded by Henry M. Needles, John T. Taylor was elected president to fill the vacancy occasioned by the resignation of Edward L. Thomas. There being no further business the meeting adjourned.

JOHN T. TAYLOR,
President.

HENRY M. NEEDLES, *Secretary.*

Re-examination by Mr. KOERNER:

Q. Under the contract of January 24th, Mr. Thomas was to deliver to you, was to put you into possession of the old bonds?

Mr. THOMAS: The contract will speak for itself.

Q. Was the condition that he was to deliver these bonds to you in the First National Bank without doing anything further complied with?

A. No, sir.

Q. That was an additional burden put upon you, Mr. Leathe?

A. That was an additional burden; yes, sir.

Mr. THOMAS:

Q. You knew all about that, Mr. Leathe?

Mr. KOERNER: Have you been sued by the First National Bank for this money?

A. I have.

Q. Mr. Thomas owes that to the bank?

A. Yes, sir.

Q. The suit is pending here in this court?

A. Yes, sir; I will say that I tendered the old bonds to the bank, and they refused to accept them for the reason, as they said, that they had become worthless, become valueless.

Q. Now, there is some talk about the bonds of the Belleville City Railway Company not having been issued as soon as they might have been, was there any reason or any cause for not issuing the bonds before the time that you did?

728 A. None to my knowledge.

Q. Was the road completed?

A. It was not.

Q. Do you think it would have been of any use to place the bonds upon the market until you completed the road?

A. There was no market value for such bonds at that time; they could not have been used in any way, and there was no reason.

Q. Do you remember when the mortgage was made.

A. I do not remember the date of it, but I remember the bonds remained just as they were and there has been no opportunity to use them up to this date, and an attempt to force them upon the market would be suicidal for us to attempt to do that.

Q. Why?

A. Because there is no market for them, there is no value for such bonds, nothing could be done with them; and then the work of the road has not progressed as fast as it would have done if Mr. Thomas had been in accordance with us and with the company and worked with us in the matter; it had hindered the construction of the road, and there is no use in offering the bonds in the present condition of affairs. Bringing suits and threatening to oust men from office and all that sort of thing puts us in a bad shape that we cannot uitilize our bonds.

Q. What was the trouble about those meetings of August 9th and during that period?

A. They were antagonistic to the interest of the company, as I un-

derstood them; the secretary attended to these things that ought not to be done.

Q. Was there a director or a person claiming to be a director by those parties whom you thought was not entitled to act as such?

A. There was.

Mr. KOERNER: In this letter here to Mr. Charles W. Thomas of August 5, 1893, you say in speaking about a meeting: "I have named the following day, Wednesday of next week, if you have no engagement on that day which will interfere; please inform me, etc. I will depend upon you notifying our Belleville associates, and I will do the same verbally"; what associates did you refer to?

A. The stockholders.

Q. That was then a meeting of stockholders?

A. Yes, sir.

Mr. KNISPEL: Mr. Leathe, I want to ask you one question, you have stated here in answer to Mr. Koerner that you did not fill out those bonds which you have before testified were issued in the beginning of July of the Belleville City Railway Company because
729 there was no use and no necessity for issuing them; was not there use and necessity for issuing them, and could you not have applied the amount of $25,000 towards covering the indebtedness of the First National Bank of Belleville, and following the contract literally that you had entered into with them?

A. I complied with that obligation by tendering them back the old bonds.

Q. If they were ready on the first of July in the beginning of July?

A. It was not in July at all.

Q. When was it, sir?

A. Well, it was much later than that; I do not know just when, but it was not in July at all, I should say.

Q. Was it before the 27th day of August?

A. I cannot answer that positively.

Q. You cannot?

A. No, sir.

Q. Well, you have not answered before that it was about the beginning of July that you came over and saw the secretary of the company, Mr. Charles W. Thomas, in reference to it; have you not testified to that?

A. I saw Mr. Charles W. Thomas, but that don't fix it in my mind when the bonds were issued or when the bonds were completed.

Q. You cannot fix that time?

A. No, sir, I cannot fix that time.

Q. The bonds were dated the 1st of July?

A. The bonds were dated the 1st of July, yes, sir.

Q. Were they not ready and signed in the month of July?

A. That I cannot say; but the bonds were not ready until the mortgage was signed.

Q. Do you know when the mortgage was signed?

A. Well, that was later; considerably later. The mortgage was never turned over to me at all; we had to get up another one.

Q. Who signed that mortgage?
A. The president and secretary.
Q. Who was president?
A. I was president.
Q. Who was secretary?
A. Mr. Charles W. Thomas.
Q. Did not the secretary notify you in the month of July, or before the 11th day of August, that everything was ready?
A. No, sir, he never turned over that mortgage to me.
Q. I asked you now whether he notified you on or before
730 the 11th day of August, or about that time, that the bonds and everything was ready?
A. If he did so state I never knew it.
Q. You never knew it?
A. No, sir, I never saw the mortgage and I never signed it, and I presume that is the reason it was never completed. It was not ready, not executed, and was never turned over to me for executing it. We had to get up another one altogether after that.

B. S. ADAMS, sworn for the complainant in rebuttal, testified as follows:

Direct examination by Mr. KOERNER:

Q. Were you present at the meeting of the board on the 25th of March, 1893?
A. Yes, sir.
Q. State whether any agreement was made by Mr. Leathe at that time that he would personally pay the debts coming to you and Mr. Thomas?
A. I did not know that there was any agreement made there and then, but I understood from previous talk that I was to get paid for what my father had put in.
Q. That was under the contract of January 24th, was it not?
A. After he got paid back for what he put in, then we was to get our money.
Q. There was no new agreement made on March 25th, was there, changing the existing agreement?
A. Well, there was things brought up and put upon the books of the company.
Q. But outside of that, verbally?
A. Well, I do not remember.
Q. You were interested in that, were you not?
A. I had an attorney there who looked after my affairs.
Q. Did you ever understand or hear of any arrangement either at that time or any other, by which you and Mr. Thomas were to be paid before Mr. Leathe was to be paid?
A. No, sir.
Q. The agreement was that you were to be paid after Leathe was paid?
A. That was the agreement; that was what I understood.
Q. Was there ever such an arrangement to your knowledge?

A. Well, I don't remember; is there any record of it if it is changed?

731 Q. You don't know of it being changed?

A. No, sir, there was talk afterwards in which Mr. Thomas told me that Mr. Thomas gave me to understand that what was spread on the minute book was a new contract, and when Mr. Leathe signed that he did not know what he was signing; that it was a great benefit to us that he signed it.

Mr. THOMAS: Who told you that?

A. You.

Cross-examination by Mr. THOMAS:

Q. Now, Mr. Adams, haven't you said a thousand time or more that you knew Mr. Leathe could not tell the truth about anything, that he was an old liar?

(Objected to; objection sustained. To which ruling of the court the defendant by his counsel then and there excepted.)

Q. Do you know his reputation for truth and veracity?

A. Yes, sir.

Q. What is it, good, or bad?

A. Well, I cannot say whether it is good or bad.

Q. Mr. Adams, don't you remember that you and Mr. Taylor were endeavoring to get Mr. Leathe to call a meeting in order to have these bonds issued?

A. I know we wanted him to call a meeting to have the bonds issued.

Q. You tried to get Mr. Leathe to hold a meeting?

A. Yes, sir.

Q. He refused, didn't he?

A. We did not have a meeting.

Q. Did he not decline to do it finally?

A. Well, I know we had some kind of a meeting when I came over here, and after that we had no meeting at all.

Q. You were trying to get him to do that, weren't you?

A. Yes, sir.

Q. You and Mr. Taylor?

A. Yes, sir.

Q. So when he says he was not requested by you and Mr. Taylor and myself to hold a meeting, that is not true, is it?

A. We were trying to hold a meeting, and met several times and tried to get him to issue the bonds.

Q. Mr. Adams, you were present at this meeting. Do you remember what took place?

A. Well, I know a whole lot took place, and it was railroaded through pretty fast.

Q. Don't you know there was a good deal of talking and had been before that?

732 A. Yes, there was lots of talking before, but there was very little at the meeting; everything seemed to be fixed; I relied on you to help yourself through, and you could not leave me out.

Q. Because you was in the same condition I was?
A. Yes, sir.
Q. Now, Mr. Adams, I will ask you, you said that you thought he was carrying out the arrangement of January 24th; did you not testify the other day that Mr. Leathe had refused to execute this contract?
A. I was with you on the day you asked Mr. Leathe if he had signed that.
Q. What did he say?
A. He said he had not.
Q. Did he say he would not?
A. I don't know.
I could not positively swear that he said we would not, I know he had not signed it.
Q. Don't you know that at other times he insisting upon me purchasing the Belleville City Railway charter?
A. I think it was Mr. Chipley.
Q. He was present too, was he not?
A. Well, Mr. Leathe was present at some meetings; I don't know all.
Q. Was not Mr. Chipley acting for Mr. Leathe in this matter entirely?
A. Well, Mr. Chipley seemed to be acting.
Q. For Mr. Leathe?
A. Yes, sir.
Q. Mr. Adams, Mr. Leathe says there was no use for issuing the bonds; don't you know that Mr. Leathe had agreed to give you and myself and Mr. Taylor, eighteen thousand dollars of those bonds?
A. Yes, sir.
Q. Don't you know that he had agreed to give you and Mr. Taylor $2,500 of them?
A. Yes, sir.
Q. Don't you know that you and Mr. Taylor and I were trying to get him to issue them so we could get our bonds out of it?
A. Yes, sir.
Q. There was that use of issuing them to give us our bonds?
A. To give us our bonds, yes, sir.
Q. Don't you know also that he was to give $25,000 of bonds for some land that he bought of my wife?
A. I knew he was to give some bonds somewhere about that.
733 Q. Were you not present when I made a demand upon him for them?
A. Yes, sir.
Q. He refused to give them?
A. Yes, sir.
Mr. KOERNER: He said they were not executed, not ready.
Mr. THOMAS: Did I not say he had plenty of time to get them ready?
A. Yes, sir.
Q. And I asked him if he would give them to me when they were issued, and he said he would not answer that question?

A. Well, I do not remember all the details of it.
Q. Is not that about it?
A. I could not say as to the last.
Q. He refused to give them to me?
A. Yes, sir, I know that.
Q. Did not you and Mr. Taylor want to bring suit against Mr. Leathe, if I did?
A. We wanted to sue, yes, sir.
Q. Long before I did?
A. Well, you persuaded us not to.
Q. Did I not tell you to wait awhile and see if we could not arrange matters?
A. Yes, sir.

Re-examination by Mr. KOERNER:

Q. Do you remember when that was when those bonds were demanded by Mr. Thomas?
A. I do not remember the date, but I know Mr. Thomas got me to go with him and be present when he demanded them.
Q. Well, it was before the mortgage was executed, was it not?
A. I don't know when it was executed.
Q. About what time was this conversation?
A. Some place around July.
Q. July of this year?
A. I am not positive as to the date.
Q. July or August?
A. Somewhere around there.
Q. Now when these meetings were called was not the purpose to oust Mr. Chipley?
A. Well, we had that in mind.

734 SAMUEL LEATHE, sworn for the complainants, testified as follows:

Direct examination by Mr. KOERNER:

Q. You are a son of Samuel H. Leathe?
A. Yes, sir.
Q. Are you secretary of this Railway Company?
A. Yes, sir.
Q. Were you present at the meeting, on the 25th of March, of these two Railroad Companies?
A. Yes, sir.
Q. It was stated here that the agreement was verbally made by your father; that he agreed to pay the then existing debts of the Belleville & St. Louis Railway Company; was there anything of that kind said in your hearing?
A. I don't recollect of ever hearing anything of that sort.
Q. Well, were you enough interested in the matter to have heard it if that had been said?
A. I should think I should have heard it. I should have remembered it.

Q. It was not, then, said in your presence, as far as you remember it?

A. No, sir.

Q. Not in your hearing?

A. No, sir.

Q. You were there during that meeting, were you?

A. I was there all the time.

Cross-examination by Mr. THOMAS:

Q. Did you go to the Recorder's office two or three times to record deeds?

A. I went to the Recorder's office twice at one meeting; now, I can not recall whether it was that meeting or the meeting after that. I was here, I think, at both meetings.

Q. You went up to the Recorder's office to record deeds that were made that day, didn't you?

A. Twice I went there.

Q. How long were you gone, about fifteen minutes at a time?

A. Yes, sir, about that; as long as it would take to walk there and back.

Q. And you went out several times?

A. A couple times, yes, sir.

735 Q. Then, of course, there was a good deal of conversation that you did not hear at all, was there not?

A. I do not remember, now, whether it was at that meeting or some other.

Q. It was the day those deeds were made?

A. Well, I took the deeds out and took them to the Recorder's office.

Q. You do not know what occurred while you were absent; something of that kind might have been said and you would not have heard it while you were absent, would you?

A. I did not say it was not said; I said I did not hear it said.

Complainants then offered in evidence the files in the Chancery case of the Belleville & St. Louis Railway Company *v.* Belleville City Ry. Co. *et al.*, also proved that said case had been dismissed by complainant therein after the hearing of this cause had commenced and proceeded to nearly its close.

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, to the September Term, A. D. 1893.

To the Honorable Judge of said Court, in Chancery sitting:

The complainant, the "Belleville and St. Louis Railway Company respectfully shows unto your Honor that it is a railway corporation duly incorporated under the general laws of the State of Illinois, having its principal office at Belleville, in said county and state.

That on the 25th day of March, A. D. 1893, it was the owner in fee and of rights of way extending from the western end of the Sur-

vey 102 of Cahokia Common Fields, in said county and state, to the western line of the south-west quarter of section 11, township 1 north, range 9 west, in said county, with grading and culverts to the eastern line of the land owned by Madison T. Stookey, and into the land of Frederick Tilling, situated in the south-west quarter of section 20, T. 1 N., R. 8 W., in said county, with certain contracts for rights of way which it had obtained from landowners, and on which it had graded its road-bed.

Your orator further shows that it had expended large sums of money in procuring said rights of way, in grading its said roadway, and had become indebted to divers persons in large sums of money, amounting in the aggregate to the sum of $71,876.75 which it owed, with interest thereon, and which, with interest, aggregated on
736 the 21st day of August, A. D. 1893, to the sum of $80,484.88, for which on that day it executed to its creditors its promissory notes for said amounts due one day after date. That said notes are now due and unpaid, and that the holder of one, amounting to the sum of $53,022.23 had brought suit against your orator thereon.

Your orator further shows that, by deed dated March 25, A. D. 1893, it conveyed all of its said property to one, Samuel H. Leathe, for the consideration, as stated in said deed, of $1 and other valuable considerations, a copy of which deed is marked Exhibit "A" to this bill, filed herewith and made a part thereof; that said other valuable considerations was the agreement then made between your orator and said Samuel H. Leathe that he, the said Samuel H. Leathe, was to pay the indebtedness of your orator, which was then and there fully known to him, the said Leathe, by statements then before and rendered to said Leathe by the said creditors of your orator, and which indebtedness was, as hereinbefore stated, settled by your orator, and its notes given therefor as aforesaid. Your orator further says that at the same time and place, and on the said 25th day of March, A. D. 1893, the said Leathe, in pursuance of an arrangement then made, transferred said rights of way, grading, etc., so deeded to him to the Belleville City Railway Company, a railway corporation organized under the laws of the State of Illinois, and having its principal office in the city of Belleville, Illinois. That at the time of the conveyance as aforesaid the said Belleville City Railway Company well knew the fact that the said Leathe had not paid the purchase money for said property, but that the same are still due and unpaid, and that it, the said Belleville City Railway Company, at the time of conveyance as aforesaid, well knew all of the facts attending said transactions, and had full and complete knowledge thereof, and had full notice of the rights of your orator, and that said indebtedness was the consideration for said deed, and that the same was not paid by said Leathe when the conveyance was made to it by said Leathe.

That said Belleville City Railway Company well knew, before and at the time of the conveyance of the said property to said Leathe, and before and at the time of the conveyance to it by said Leathe the full nature of the indebtedness of the said Belleville and St. Louis Railway Company, how said indebtedness was incurred, and that the property conveyed was obtained by your orator, and the

grading done by the creation of said indebtedness, and that the same was unpaid.

That the matters herein set forth were discussed and agreed upon in the presence of all its stockholders, and at a meeting of its directors and stockholders then held.

737 Your orator further shows that said indebtedness nor any part thereof has not been paid by said Leathe, nor by said Belleville City Railway Company, although the same is now due and payable. Your orator further shows that the said Belleville City Railway Company is about to issue bonds and execute a mortgage to secure the same which will prevent your orator from realizing from its property the amount due it, and will so incumber it as to make it valueless to your orator. In consideration of the premises, and inasmuch as your orator can only have an adequate remedy in equity, your orator presents this, its bill in equity, and makes the Belleville City Railway defendant hereto, and prays that it may be summoned to answer the same, and upon a final hearing thereof your Honor will determine the amount due your orator, and in default of payment by said defendant that it will order the premises conveyed by said deed to be sold and the proceeds thereof applied to the payment of amount due to your orator, and that your Honor will declare a vendor's lien thereon in favor of your orator, and will grant such other and further relief as the nature of the case may justly require, and as to equity and justice may seem meet and proper, as in duty bound your orator will ever pray, etc.

THE BELLEVILLE & ST. LOUIS
RAILWAY COMPANY,
By EDWARD L. THOMAS,
Its Solicitor.

Filed September 6, 1893.
THOMAS MAY, JR.,
Circuit Clerk of St. Clair Co., Ill.

EXHIBIT "A" TO BILL.

Copy of the deed recorded in book 224, page 192.

The grantor, the Belleville & So. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, and State of Missouri, and of other valuable considerations to it from him moving, hereby grants and sells, conveys and confirms unto the said Samuel H. Leathe all the following described land, situate in the county of St. Clair, and State of Illinois: All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed, dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof. Also all the rights of way, easements, grading and superstructures thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis.

And the grantor covenants and agrees to and with the said Leathe

that it will, upon demand, convey by a good and proper deed of conveyance, to the said Leathe or his assigns any land, ease-
738 ments, right of way, privilege or immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY,
By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

We, the undersigned, being all the stockholders of the Belleville & St. Louis Railway Company, ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES.
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public, in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument for the uses and purposes therein set forth as president of said company, that he is president of said company and executed said deed as president by order of the stockholders of said company, whose names are subscribed thereto, also that the said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of the stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, 1893.

[NOTARIAL SEAL.] A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock, P. M.

739 STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, 1893.

THE BELLEVILLE CITY RAILWAY COMPANY
vs.
BELLEVILLE & ST. LOUIS RAILWAY COMPANY.

Answer of the Defendant.

Now comes the defendant, and for answer to the allegations of the complaint, says:

That the Belleville & St. Louis Railway Company was formed as a corporation by virtue of the laws of the State of Illinois.

The said company had acquired some rights of way and contracts for rights of way, and had done some grading along the route of the railroad intended to be built by it, and some money had been expended therefor, which had been furnished by Edward L. Thomas and one W. A. Adams, now deceased.

That prior to the time of the making of the deed by the Belleville & St. Louis Railway Company to the Belleville City Railway Company, to wit: on the 24th day of January, A. D. 1893, the said Edward L. Thomas, who was the chief promoter and nominal owner of nearly all of the stock of the said Belleville & St. Louis Railway Company, the stock of said corporation, according to its records, then standing as follows:

Edward L. Thomas	4,856	shares
Bart. S. Adams	62	"
John T. Taylor	50	"
Henry M. Needles	21	"
Alpheus Boling	1	"
Josephine Johnson	10	"
	5,000	"

And Bart S. Adams made an agreement in writing with one Samuel H. Leathe, in words and figures as follows:

ST. LOUIS, *January* 4, 1893.

It is agreed that we will transfer to Samuel H. Leathe $225,329,000 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300 of said stock.

740 Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 of 5% bonds of said company. The present bonds, $150,000, to be placed in the hands of Samuel H. Leathe, to hold until other bonds are issued. He to advance amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750, with interest, in St. Louis.

Same proportion of stock to be maintained in coal and other com-

panies organized to carry out the project as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas.

Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000, and John T. Taylor $12,700. Each party to receive back amounts advanced to the enterprise, as soon as bonds are sold.

Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amounts to be advanced by him, and balance to go into the treasury of the railway company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

In consideration of the above agreement I agree to leave in the hands of Mr. Samuel H. Leathe, all sums coming to me as a guarantee of the security, to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated January 24, 1893.

(Signed) EDWARD L. THOMAS.

This defendant shows unto your Honor that at that time the condition of the enterprise was desperate, and unless pecuniary assistance could be procured, all moneys therein invested by the said Thomas and Adams, and the creditors of said corporations would be lost.

Under the said agreement it was intended that from the proceeds of the bonds to be issued, the contemplated railroad should be built and equipped, and all moneys advanced by said Leathe to that end should first be repaid, and then the legitimate obligations incurred by the corporation theretofore should be adjusted.

Your defendant further shows that under said agreement,
741 the said Leathe became the holder in equity of more than 5% of the stock of said corporation, and he and the said Chipley became the holders together of a fraction less than two-thirds of said capital stock.

This defendant further answering, says that subsequent to said agreement, it was determined by all the parties interested therein, to acquire the charter of the Belleville City Railway Company, a charter granted by the General Assembly of the State of Illinois, and to construct and operate the proposed railroad under the provisions of said last-named charter, and such charter was acquired, the parties to said agreement retaining the same interest they held under the original agreement, except that the said Edward L. Thomas was to and did transfer to Charles W. Thomas, who controlled said charter, certain stock of said corporation to the holders of the stock of the said Belleville & St. Louis Railway Company.

In order to complete the transactions and vest the legal title of

property held by the said Belleville & St. Louis Railway Company in said defendants, the transfer shown by the bill, first to Samuel T. Leathe, and then from him to this defendant, were made on the same day. This defendant distinctly denies that there was any agreement made between said Leathe, and said Belleville & St. Louis Railway Company, or the Belleville City Railway Company, that the said Leathe should pay the existing indebtedness of the Belleville & St. Louis Railway Company.

And this defendant in further explanation of this transaction, distinctly states as a matter of fact that there was no transaction of barter and sale between the said companies and said S. H. Leathe; that it was not intended nor was the legal effect of the deeds of conveyance to create an indebtedness from the said Leathe to the said Belleville & St. Louis Railway Company, or from the said Belleville City Railway Company, to the said Leathe, or from the said Belleville City Railway Company to the said Belleville & St. Louis Railway Company, but *to* the intention and purpose controlling all parties in the transaction was to simply change from the organization of the Belleville & St. Louis Railway Company, to that of the Belleville City Railway Company, and thereby terminate and wipe out the corporation known as the Belleville & St. Louis Railway Company.

And this defendant distinctly states that the Belleville City Railway Company is in no manner indebted to the Belleville & St. Louis Railway Company.

This defendant further states that the notes mentioned in said bill as made by the Belleville & St. Louis Railway Company to its creditors, and particularly the one pretended to have been made to Edward L. Thomas, who had brought suit upon the same as
742 alleged in said bill, were made after the agreement herein set forth, made in January 24, 1893, and after the deeds of transfer of March 25th, 1893, to wit: in August 1893.

That at the time the notes were made, any indebtedness which might have existed from said Belleville & St. Louis Railway Company to Edward L. Thomas was payable only in manner provided in said agreement.

The parties holding over two-thirds of the stock of said Railroad Company were not represented, and none of the so-called Directors, who were at the time of the making of said notes acting as such, have any substantial interest in the capital stock of said incorporation, which had as before stated, in fact ceased to exist; and all the capital stock heretofore held by said Edward L. Thomas, which had not been agreed to be transferred by said agreement, was thereby pledged to Samuel H. Leathe. Therefore your orator distinctly alleges that said note made to Edward L. Thomas upon which he brought suit against the Belleville & St. Louis Railway Company was collusively and fraudulently made, and without right or power of the corporation to make it, and is fraudulent and void.

And having fully answered, the defendant prays to be discharged hence without day, &c.

G. A. KOERNER,
Sol. for Defendant.

STATE OF ILLINOIS, *County of St. Clair, ss:*

Samuel H. Leathe, being first duly sworn, on his oath says that he is the President of the Belleville City Railway Company, and that the above answer is true in substance and in fact.

SAMUEL H. LEATHE.

Subscribed and sworn to me before this 6th day of November, 1893.

[Seal of St. Clair County, Illinois.]

THOMAS MAY, JR.,
Circuit Clerk.

Filed Nov. 6th, 1893.

THOMAS MAY, JR.,
Circuit Clerk.

743 CHARLES W. THOMAS, sworn for the defendants in rebuttal, testified as follows:

Examined by Mr. E. L. THOMAS:

Q. I will ask you, Mr. Thomas, if you remember the endeavors that were made to get a meeting of the board of directors of the Belleville City Railway Company last summer?

(Objected to.)

A. I do.

Q. What was done?

A. Well, there was a great deal done; I saw Mr. Leathe myself several times in regard to holding a meeting of the directors, and at length Mr. Leathe called on me to give notice of a meeting, and I did so.

Q. That was pursuant to the letter of August 5th?

A. Yes, sir.

Q. What was that to be?

A. A meeting of the directors. Mr. Leathe had no power to call any other.

Q. Did you have a conversation with Mr. Leathe about what was to be done at that meeting?

A. Yes, sir.

Q. When was that?

A. I think that was on Monday morning; previous to that Mr. Leathe was in my office, I had been to see him on Saturday before about one o'clock on the corner of Market and Fourth streets, I met him and explained to him the purpose of the meeting and that I had some resolutions setting out the actions the board ought to take; and he said that was all right, he would come over and examine them; he appeared at my office on Monday morning and examined the proposed action.

Q. Did he examine the action that was taken on August 11?

A. Yes, sir.

Q. In this book?
A. Yes, sir.
Q. Did he appear at the meeting?
A. No, he did not appear; at that time Mr. Leathe was not present when the first meeting was held.
Q. Now, then, I want to ask you whether at any time before the meeting of August 11th, you notified him that the mortgage was ready to execute; that it had been prepared?
A. I wrote him a letter, yes sir.
744 Q. When was that letter written?
A. I do not remember.
Q. See if that is it?
(Showing witness a letter book.)

AUGUST 11, 1893.

Mr. Samuel H. Leathe, President:

The board held a meeting in pursuance of the last adjournment at 10 o'clock this morning. Nothing was done which was not in accordance with your understanding of the purpose of the meeting as expressed to me, and nothing which will not meet with your approval according to my understanding of your wishes and plans. The following resolutions were passed. One approving the acts of the president and secretary so far done with reference to the bonds and mortgage; one directing the president and secretary to execute the mortgage and deliver the same with the bonds to the St. Louis Trust Co. to be dealt with as agreed between that company and this; one directing the treasurer to produce the bonds from the Trust Company and turn them over to Samuel H. Leathe; one directing payment of $1,500 to Mr. E. C. Rice as previously agreed; one allowing me $500 which applied to payment of five shares of stock, and one directing the president and secretary to issue certificates of stock to the stockholders of record. Under the charter of this company the corporate powers are vested in the board, and there being no doubt in my mind of the entire regularity of these proceedings I am ready at any time to comply with the directions of the board which seem to me to be entirely reasonable. I await notice from you as to the time when you desire me to act with you.

Board adjourned to Aug. 21, 10 A. M.

CHARLES W. THOMAS, *Secretary.*

A. I wrote Mr. Leathe on that same day on the 11th of August that I was ready to comply with the direction of the board which seemed to be entirely reasonable, and waited to hear from him when he desired to act with me.
Q. I will ask you if that time the bonds had been prepared?
A. The bonds had been signed, I think, by Mr. Leathe and myself in St. Louis prior to that time.
Q. What is the date of that letter?
A. August 11th.
Q. And you had prepared the mortgage?
A. Yes sir, I had prepared the mortgage and had it printed; a copy was submitted to the trustees and turned over to me and we

agreed upon form; a copy had been left with the trustees and everything had been agreed upon and it seemed to be satisfactory to him.

745 Q. Did he execute the mortgage with you?

A. No, sir.

Q. Well, did he say why he did not do it?

A. No sir, he never told me why.

Q. Now, Mr. Thomas, were you present at the meeting of March 25th?

A. I was secretary of the company at that time and was present at the meeting.

Q. What was the consideration for the deed from the Belleville & St. Louis Railway Company to Samuel H. Leathe?

(Objected to, objection sustained; to which ruling of the court defendant at the time excepted.)

The COURT: He explained that fully when he was on the stand before.

In witness whereof I hereunto set my hand and seal this 22d day of February, A. D. 1894.

A. S. WILDERMAN, *Judge.*

Filed February 23d, 1894.
THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the order of court entered at the September term, A. D. 1893, in said cause.

SAMUEL H. LEATHE, THE BELLEVILLE & ST. LOUIS RAILWAY CO., and THE BELLEVILLE CITY RAILWAY COMPANY
vs.
EDWARD L. THOMAS.

Injunction, &c.

On the 25th day of November, A. D. 1893, come the parties by their respective solicitors, and this cause is heard on the pleadings and evidence, and the further hearing of this cause is postponed until December 13th, 1893. On the 13th day of December, 1893, come again the parties by their solicitors and the trial of this cause is resumed and the trial progresses, and now on the 21st day of December, 1893, the court after hearing the evidence and arguments takes this cause under advisement to be decided as of this date.

Be it remembered that the following is a true and correct copy of the order of court entered at the January term, A. D. 1894, in said cause.

746 SAMUEL H. LEATHE, THE BELLEVILLE & ST. LOUIS RY. CO., & THE BELLEVILLE CITY RY. CO.
vs.
EDWARD L. THOMAS.

Injunction.

On the 12th day of February, A. D. 1894, come the parties by their respective solicitors, and the court after hearing the evidence and arguments of counsel on the 21st day of December, 1893, and being fully advised of and concerning the premises, orders, adjudges and decrees that the bill in this cause be dismissed, said order and decree to take effect as of December 21st, 1893. It is further ordered that complainants pay the costs of this suit and that execution issue therefor. And afterwards the court grants time to complainants to file a certificate of evidence by March 15th, 1894.

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court in and for said county, in the state aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of: 1. The bill and Exhibits A, B, C and D. 2. Defendant's answer. 3. Exhibit I to answer. 4. Complainants' replication. 5. Certificate of evidence. 6. The order of court of the September term, 1893. 7. The order of court of the January term, 1894, in the case of Samuel H. Leathe *et al. vs.* Edw. L. Thomas, as the same appears of record and on file in my office, the same being a complete record in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Belleville, this 31st day of January, A. D. 1895.

[Seal of St. Clair County, Illinois.]

THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Dep-ty.*

747 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Alonzo S. Wilderman, one of the Judges of the Third Judicial Circuit of the State of Illinois, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, Clerk of the Circuit Court of St. Clair County aforesaid, (which county is in said Judicial Circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere; and that his attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 31st day of January, A. D. 1895.

A. S. WILDERMAN. [SEAL.]

STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court, in and for said county in the state aforesaid, do hereby certify that Alonzo S. Wilderman whose genuine signature is appended to the foregoing certificate, was, at the time of signing the same, one of the Judges of the Third Judicial Circuit of the State of Illinois (of which Judicial Circuit the said St. Clair County forms a part), duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such, in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Belleville, this 31st day of January, A. D. 1895.

THOMAS MAY, JR., *Clerk,*
By PHIL. H. SOPP, *Dep-ty.*

748 Plaintiff then called HENRY M. NEEDLES, a witness for plaintiff, who, being first duly sworn, testified as follows:

Q. What is your name, place of residence and business?

A. My name is Henry M. Needles; I reside in Belleville, Illinois, and am an attorney at law and real estate agent.

Q. What connection have you had and now have with the Belleville & St. Louis Railway Company?

A. I have been and now am a member of its Board of Directors and also its Secretary since its organization.

Q. What action, if any, was taken by said company regarding the suit of Edward L. Thomas against said company, set out in the declaration in this cause?

A. When said suit was brought against the company by Edward L. Thomas, the Board of Directors met and passed the following resolutions, which I read from the records of the company I now hold in my hand, and which is as follows:

BELLEVILLE, ILL., *Sept.* 8, 1893.

Office of Belleville and St. Louis Railway Company.

At a meeting of the Board of Directors, pursuant to a call of the President, there were present, Edward L. Thomas, John T. Taylor and Henry M. Needles. The President called the meeting to order. The President then reported that he had in his individual capacity, brought suit against the company on a note of the company, whereupon John T. Taylor offered the following resolution:

"*Resolved,* That the Secretary of the Company notify Samuel H. Leathe of the bringing of said suit, and inform him that this company will permit him to defend the same in its name if he desires so to do," and moved its adoption.

Being seconded by Mr. Needles, it was unanimously adopted.

Q. What did you as secretary do regarding said resolution?

A. In accordance with the direction therein I notified the defendant, Mr. Samuel H. Leathe, that said suit was pending in the Circuit Court of St. Clair County, Illinois, and that as the county held him responsible for its debts that he could defend said suit in the name of the company, and take such steps in the company's name regarding the same as he might see fit.

Q. Who did defend said suit?

A. Mr. Leathe after the notice was given him employed attorneys and defended the case. The company never employed any attorney, nor did it ever make any defense, leaving that matter to Mr. Leathe in pursuance of the notice I gave him.

749 Plaintiff then called EDWARD L. THOMAS, a witness for plaintiff, who, being first duly sworn, testified as follows:

Q. What is your name, place of residence and business?

A. My name is Edward L. Thomas; I live at Belleville, Illinois, and am a lawyer, and am the person for whose use this suit is brought.

Q. State what evidence was heard, if any, in the suit at law wherein you were plaintiff, and The Belleville and St. Louis Railway Company was defendant, and which is set out in the declaration in this case?

A. The law case and the chancery case of Samuel H. Leathe, The Belleville and St. Louis Railway Company and the Belleville City Railway Company against me for injunction were both tried by consent before the judge, and the evidence taken was applied to both cases. The evidence in the law case was the same as in the chancery case, and is the same as included in the record of the chancery case here produced, and the certificate of evidence filed in the chancery case and included in the record of that case here presented, contains the evidence heard in the law case as well as in the chancery case.

Plaintiff rested.

And this was all of the evidence in the case.

Whereupon, the defendant, by counsel, moved the court to exclude the evidence, and render judgment for the defendant.

Thereupon the court took the case under advisement.

And afterwards, on the 18th day of February, A. D. 1897, it being one of the days of the regular January term of our said court, the court sustained said motion to exclude said evidence, and excluded said evidence, to which action and decision of the court in sustaining said motion and excluding said evidence the plaintiff at the time excepted.

And thereupon the court rendered judgment in said cause for the defendant, and against the plaintiff for costs, and to this action and decision of the court in the rendition of said judgment the plaintiff at the time excepted.

And inasmuch as the matters and things aforesaid are not of themselves matters of record in said cause, the plaintiff presents this its bill of exceptions, and prays that it may be signed and sealed and made part of the record in said cause, which is done accord-

ingly, this twenty-first day of April, A. D. 1897, the same being one of the days of the regular January term, A. D. 1897, of the said court.

WILLIAM J. ALLEN, [SEAL.]
U. S. Dist. Judge.

750 Afterwards, to wit: on the twenty-second day of April, it being one of the regular days of the regular January term, A. D. 1897, of the United States Circuit Court, the following proceedings were had in said court in said cause, and entered of record, to wit:

THURSDAY, *April* 22, 1897.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS,
vs.
SAMUEL H. LEATHE.

Assumpsit.

This day comes the plaintiff by its attorney, and files its petition for a writ of error from this court to the United States Circuit Court of Appeals for the Seventh Circuit, said petition being accompanied by assignment of errors, as required by the rules of said Court of Appeals.

It is ordered by this court that said writ of error be allowed upon plaintiff entering into a bond to the defendant in the penalty of five hundred dollars with security, to be approved by the court within thirty days.

Whereupon plaintiff presents its bond to the court in the penalty of five hundred dollars, conditioned as the law directs, which bond is now approved by the court and ordered to be filed.

UNITED STATES OF AMERICA, *Seventh Circuit, ss:*

In the United States Circuit Court of Appeals in and for said Circuit.

To the October Term, A. D. 1896.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS, Plaintiff in Error,
vs.
SAMUEL H. LEATHE, Defendant in Error.

Petition for Writ of Error.

To the Honorable Justices of the United States Circuit Court of Appeals in and for said Circuit:

Your petitioner, The Belleville & St. Louis Railway Company, respectfully represents that on the first day of March, A. D.
751 1894, your petitioner for the use of Edward L. Thomas commenced against one Samuel H. Leathe an action in as-

sumpsit in the Circuit Court of St. Clair County and State of Illinois, for the recovery of the sum of sixty thousand dollars claimed to be due them on a contract, to your petitioner for the use aforesaid, from the said Samuel H. Leathe, and claimed by your petitioner to have been so adjudicated in suits before that time determined in said Circuit Court of St. Clair County and State of Illinois, in which your petitioner, the said Edward L. Thomas and the said Samuel H. Leathe were parties.

Your petitioner further represents that the said Samuel H. Leathe, the defendant, was duly served with the summons in said case on the 13th day of March, A. D. 1894, and that the said Samuel H. Leathe being a resident and citizen of the State of Missouri at the time said action was commenced, and from thence hitherto, and your petitioner, The Belleville & St. Louis Railway Company and the said Edward L. Thomas, for whose use said suit was brought, being residents and citizens of the State of Illinois at the time said action was brought and thence hitherto, such proceedings were had at the April term, A. D. 1894, of said Circuit Court of St. Clair County, Illinois, that the said cause was duly removed upon the petition of the said Samuel H. Leathe, the defendant, from said Circuit Court of St. Claire County, Illinois, aforesaid, to the United States Circuit Court for the Southern District of Illinois.

Your petitioner further represents that said Samuel H. Leathe, defendant, on the 15th day of May, A. D. 1894, caused to be filed in the said United States Circuit Court, a full, true and complete copy of the papers, records and proceedings in said cause in said Circuit Court of St. Clair County, Illinois, as required by the statute in such case made and provided, and on the sixth day of June, A. D. 1894, filed in said Circuit Court of the United States a plea of general issue to the declaration in said cause. Your petitioner further represents that at the January term in the year of our Lord one thousand eight hundred and ninety-five of the said United States Circuit Court, to wit: on the 16th day of January, A. D. 1895, your petitioner filed in said United States Circuit Court an amended declaration in said cause and ruled the defendant to plead to said amended declaration by the 21st day of January, A. D. 1895. That said defendant having failed to plead or demur to said amended declaration in accordance with said rule, a default was taken and on the execution of a writ of inquiry judgment was entered against said defendant in said cause on the 31st day of January, A. D. 1895, for the sum of $55,957.90.

Your petitioner further shows, that on the first day of February, A. D. 1895, it being one of the days of the regular January term of said court, said defendant filed a motion to set aside said default and filed an affidavit in support of said motion.

752 That thereupon on the fourth day of February, A. D. 1895, said court set aside said default and vacated said judgment and granted defendant leave to plead.

Your petitioner further represents that on the 27th day of February, in the year of our Lord one thousand, eight hundred and ninety-five, it being one of the days of the regular January term of said United States Circuit Court, the said cause came on for trial be-

fore the Hon. William J. Allen, then presiding judge of said court, and the said parties having stipulated in writing to try the said cause before the court, waiving a jury, such proceedings were had, that after the evidence for plaintiff had been introduced, defendant moved the court to exclude said evidence and render judgment for defendant in said cause. That thereupon the court took said cause under advisement.

Your petitioner further represents that on the 18th day of February, in the year of our Lord one thousand eight hundred and ninety-seven, it being one of the days of the regular January term of said court for said year, said court sustained the said motion and excluded the evidence offered by plaintiff in said cause and thereupon entered judgment in said cause for defendant and against plaintiff for costs of said suit.

Your petitioner further represents that it is advised and believes, that in the record and proceedings aforesaid of the said United States Circuit Court, in the said cause, there is manifest error, all of which will more fully and at large appear by the assignment of errors presented herewith.

And your petitioner for these and other reasons, prays this Honorable Court to award it a writ of error to be directed to the said Circuit Court of the United States for the Southern District of Illinois, commanding the said Circuit Court, under its seal to send the record and proceedings aforesaid, with all things concerning the same, unto this Honorable Court, at the October term A. D. 1897, thereof, so that the said alleged errors may be duly corrected by this Honorable Court.

And your petitioner further represents that it filed herewith an assignment of errors in said cause, and it prays that upon the hearing hereof this Honorable Court will reverse the said judgment and your petitioner will ever pray, etc.

CHARLES W. THOMAS AND
EDWARD L. THOMAS,
Attorneys for the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, Plaintiff in Error.

[Endorsed:] Filed April 22, 1897. James T. Jones, Clerk.

753 UNITED STATES OF AMERICA, *Seventh Circuit, ss:*

In the United States Circuit Court of Appeals, to the October Term, A. D. 1896.

THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY, for the Use of EDWARD L. THOMAS, *Plaintiff in Error,*
vs.
SAMUEL H. LEATHE, Defendant in Error.

Assignment of Errors.

And now comes the said Belleville and St. Louis Railway Company for the use of Edward L. Thomas, plaintiff in error, and says

that in the record and proceedings aforesaid, there is manifest error in this, to wit:

First. The Circuit Court erred in not rendering judgment for petitioner for the use of Edward L. Thomas on the pleading in said cause.

Second. The Circuit Court erred in sustaining said motion to exclude the evidence offered by petitioner on the trial of said cause.

Third. The Circuit Court erred in excluding the evidence offered by petitioner on the trial of said cause, on motion, which evidence was in substance as follows, that is to say:

1st. The transcript of the record of the Circuit Court of St. Clair county, Illinois, in the case of Edward L. Thomas *v.* The Belleville and St. Louis Railway Company, which shows that an action of assumpsit was brought to the September Term, A. D. 1893, of said court by said Thomas against said railway company.

That said Samuel H. Leathe, defendant herein, appeared in that behalf and defended said cause, filing pleas, etc. That pleas set up a contract between said Samuel H. Leathe and Lucien M. Chipley on one side and Edward L. Thomas and Bart S. Adams on the other, dated January 24, 1893, by which said Thomas had agreed to await the sale of bonds of the railway company and the payment to said Leathe of any money he might invest before said Thomas should receive the amount claimed by him from the said railway company, which was the claim sued for and which was, therefore, not due. The replications to the plea set up that said supposed contract of January 24th had never been executed by the parties. That it was afterwards abrogated and annulled and a new contract made on March
754 25, 1893. That in said new arrangement, said railway company had conveyed its property to said Samuel H. Leathe, upon his agreement to pay the debts of said railway company, of which the claim sued for was one, and of which Leathe had notice. That a trial was had before the court, a jury being waived and an agreement made that all proper evidence should be given under the general issue, pleas and replications being withdrawn. That after a full hearing the court gave a judgment for the plaintiff for the sum of $53,022 23/100.

2d. The transcript of the record of the Circuit Court of St. Clair county, Illinois, is a cause in which said Samuel H. Leathe, the Belleville and St. Louis Railway Company and the Belleville City Railway Company were complainants, and Edward L. Thomas was defendant. Which transcript of record shows, that said cause was a bill in chancery brought by said Samuel H. Leathe, The Belleville and St. Louis Railway Company and The Belleville City Railway Company against said Edward L. Thomas, to enjoin him from proceeding to judgment in the said case of Edward L. Thomas *v.* The Belleville and St. Louis Railway Company, then pending in said court, and for relief. Said bill setting up the said contract of January 24, 1893, between said Samuel H. Leathe and Lucien M. Chipley on one side and Edward L. Thomas and Bart S. Adams on the other.

Item 26 of the bill is as follows:

"And your orators further show, that to whatever amount the said Thomas may have had a just claim against the Belleville and St. Louis Railway Company for money expended and labor on account of the construction of said railroad, he has no claim which is now due or enforcible against said railroad, and he should not be allowed to procure judgment thereon, because all such claims were by the terms of said contract hereinbefore recited to be adjusted in a manner satisfactory to the parties interested therein, to wit: the said Belleville and St. Louis Railway Company, Samuel H Leathe, Bart. S. Adams, and the said Edward L. Thomas, and that the amount when so ascertained and adjusted was to be paid under the terms and conditions of said contract out of the proceeds of the bonds to be issued by said company, after and subject to the payment from the same source, of any and all sums which might be expended by your orator, Samuel H. Leathe, in completing the construction of said railroad. And your orators aver, that under the terms and conditions of said contract, the said sums so laid out and expended by the said Thomas, and constituting part of the consideration for said note which is not *per se* fraudulent, were not to be a charge or claim against said railroad company or its assets and effects, until all amounts laid out and expended by your orator, the said Leathe, in finishing and completing the construction of said railroad
755 should be paid; and your orators aver that the claim of the said Edward L. Thomas for money so laid out and expended by him, whatever the amount, is subject to and is postponed by virtue of said contract, to the claim of your orator, Leathe, for moneys expended and to be expended in building and equipping said road, and is payable only after adjustment, out of the proceeds of the bonds of said railroad company, as hereinbefore set forth, and after the satisfaction of all claims due to your orator Leathe, for money by him advanced or to be advanced for the building and equipment of said railroad.

The bill further alleges, that no change was ever made in the contract of January 24, 1893, and that the transactions of March 25, 1893, were supplemental to the contract of January 24th and the deeds from the Belleville and St. Louis Railway Company (plaintiff in error) to Samuel H. Leathe (defendant in error), and from Leathe to the Belleville City Railway Company were not deeds of bargain and sale, but were formal matters, using Leathe as a conduit to get title from one company to the other. That a bill had been filed by the Belleville and St. Louis Railway Company against the Belleville City Railway Company for a vendor's lien, alleging that the deed made by the Belleville and St. Louis Railway Company to said Leathe was a deed of bargain and sale and made in consideration that said Leathe should pay the debts of said railroad company. That such allegations were not true, and the bill prayed that Thomas be enjoined from further prosecuting the said suit at law, and that other equitable relief may be granted.

The transcript also contains the answer of said Thomas to said bill for injunction, which answer denies that the alleged contract of

January 24, 1893, was ever executed or in force; that it had by mutual agreement been abrogated and annulled and a new contract made March 25, 1893. That on March 25, 1893, the Belleville and St. Louis Railway Company conveyed its property by deed to Leathe. That the consideration expressed in the deed was one dollar and other valuable considerations, moving from Leathe to the company. That said other valuable consideration was the agreement by Leathe to pay the debts of said railway company, of which the claim sued for in the law case by Thomas was a part, and of which fact Leathe had notice. And in answer to item 26 of the bill, made the following allegations:

"Defendant further says that the statement in item 26 that to whatever amount said Thomas may have had a just claim against the Belleville & St. Louis Railway Company for money expended and labor on account of constructing said railway he has no claim which is now due and enforceable against said railroad is not true,
but that the amount expended by said Thomas is now due
756 and payable to him by the terms of the contract entered into
by the said Complainant Leathe, upon the sale and deeding to him of the property of the Belleville & St. Louis Railway Company, and that all allegations in said item or in said bill contrary to the statements herein are untrue.

This defendant says that the amount due this defendant was well known to said Leathe, except as to a portion of the grading, which at the time of the rendition of the account to the said Leathe by defendant had not been calculated by the engineer, but had been estimated. In every other respect the items were to be paid by said Leathe, and in assuming the debts of the Belleville & St. Louis Railway Company under the contract of March 25th, the statement referred to as fixing the amount of that indebtedness, all of which was well known to said Leathe, it being also understood and agreed that the same was to bear interest, as provided by the resolutions of the directors of said railway company, long before that time, in the hands of said Leathe, and examined by him." That the amount coming to Thomas was therefore due and payable and Thomas ought not to be enjoined.

The transcript further shows that complainant introduced in evidence the contract of January 24, 1893, as claimed in the bill, and other evidence showing that complainant had made purchases and expended money and noted under that contract.

Defendant then called Lucien M. Chipley, Bart S. Adams, Charles W. Thomas and defendant, who testified in substance that the contract of January 24th was not executed by Leathe and Chipley. That Leathe refused to execute it. That by agreement of all parties interested it was annulled and abrogated. That after considerable negotiation and proposal of several arrangements the agreement of March 25th, 1893, was reached, by which the Belleville & St. Louis Railway Company conveyed its property to Leathe in consideration that he should pay the debts of that company which were then shown by a statement, and which included the amount due Thomas; Leathe conveyed the same property to the

Belleville City Railway Company in payment of 4,995 shares of stock, agreed to float its bonds, and protect the company against foreclosure of mortgage.

Complainant then called John M. Holmes, Samuel Leathe and complainant in rebuttal, who testified to the contrary. That upon full hearing upon this evidence, the issues made by bill, answer and replication and argument of counsel, the court dismissed the bill.

Third. The evidence of Henry M. Needles, who testified he was a director and secretary of the Belleville and St. Louis Railway Company, and who produced the records of the company and read a resolution of the board of directors of September 8, reciting
757 the bringing of the suit of Edward L. Thomas against the Belleville and St. Louis Railway Company, and directing the secretary to notify Samuel H. Leathe of that fact that he might defend said suit in the name of the company. Witness then said, that, as secretary, in pursuance of the direction, he had notified Mr. Leathe of the pendency of said suit; that the company held him responsible for the debt due Thomas and that he might use the name of the company and take such steps in defense of the case as he saw fit; that said Railroad Company made no defense in said suit and did not employ an attorney; that Leathe employed attorneys and defended the suit.

Fourth. The evidence of Edward L. Thomas, who testified that he was the person for whose use the present case was brought; that the law case of himself against the Belleville and St. Louis Railway Company, and the chancery case of Samuel H. Leathe, the Belleville and St. Louis Railway Company and the Belleville City Railway Company against himself, in the Circuit Court of St. Clair County, Illinois, were both tried, by agreement, at one trial; that the evidence in the law case was the same as in the chancery case, and was all contained in the certificate of evidence in the transcript of the record of the chancery case offered in evidence herein.

Fourth. The Circuit Court erred in rendering judgment for defendant in said cause.

Fifth. The Circuit Court erred in rendering judgment against petitioner for costs of said suit.

Sixth. The Circuit Court erred in not rendering judgment in said cause for petitioner, for the use of Edward L. Thomas for amount claimed.

Wherefore, the plaintiff in error prays that the said judgment may be reversed and held for naught.

CHARLES W. THOMAS AND
EDWARD L. THOMAS,
Attorneys for the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, Plaintiff in Error.

(Endorsed:) Filed April 22, 1897. James T. Jones, Clerk.

758 Know all men by these presents, That we, the Belleville and St. Louis Railway Company as principal, and Edward L. Thomas and Charles W. Thomas as sureties, are held and firmly

bound unto Samuel H. Leathe in the penal sum of Five Hundred Dollars to be paid to the said Samuel H. Leathe, his executors, and administrators, to which payment well and truly to be made we bind ourselves, each of us and our successors, heirs, executors and administrators, firmly by these presents.

Witness our seals this twenty-second day of April A. D. 1897.

The condition of the above obligation is such that whereas the said Belleville and St. Louis Railway Company for the use of Edward L. Thomas hath prosecuted a writ of error to the United States Circuit Court of Appeals, for the Seventh Circuit, to reverse a certain judgment rendered in a certain action lately pending in the Circuit Court of the United States for the Southern District of Illinois, in which the said Belleville and St. Louis Railway Company for the use of Edward L. Thomas was plaintiff, and the said Samuel H. Leathe was defendant, the said judgment being for said plaintiff for costs of said suit, and rendered on the 18th day of February, A. D. 1897, the same being one of the days of the regular January term, A. D. 1897, of the said United States Circuit Court.

Now, therefore, if the above named the Belleville and St. Louis Railway Company shall prosecute its said writ of error to effect, and answer all costs, if it fail to make its plea good, then this obligation to be void, otherwise to remain in full force and virtue.

THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By JOHN T. TAYLOR, *President.* [SEAL.]

Attest:
HENRY M. NEEDLES, *Secretary.*

EDWARD L. THOMAS. [SEAL.]
CHARLES W. THOMAS. [SEAL.]

Approved April 22d, 1897.
WILLIAM J. ALLEN,
U. S. District Judge.

759 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Circuit Court of the United States for the Southern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you between The Belleville and St. Louis Railway Company for the use of Edward L. Thomas, plaintiff, and Samuel H. Leathe, defendant, a manifest error hath happened to the great damage of the said Belleville and St. Louis Railway Company for the use of Edward L. Thomas, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal distinctly

and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you may have the same at Chicago on the third day of May, 1897, in the said United States Circuit Court of Appeals for the Seventh Circuit, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-second [SEAL.] day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of our independence the one hundred and twenty-first year.

JAMES T. JONES,
Clerk Circuit Court United States,
Southern District Illinois.

Filed April 22, 1897.
JAMES T. JONES, *Clerk.*

760 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, James T. Jones, clerk of the Circuit Court of the United States in and for the Southern District of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed, and proceedings thereon had, in a certain case wherein the Belleville and St. Louis Railway Company for the use of Edward L. Thomas is plaintiff, and Samuel H. Leathe is defendant, as truly and completely as the same appear of file and record in my office.

In witness whereof, I have hereunto set my hand and seal of said court at Springfield, in said district, this 30th day [SEAL.] of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-first year.

JAMES T. JONES, *Clerk.*

THE UNITED STATES OF AMERICA, *ss:*

To Samuel H. Leathe, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago on the third day of May, 1897, pursuant to a writ of error filed in the office of the clerk of the Circuit Court of the United States for the Southern District of Illinois, wherein the Belleville and St. Louis Railway Company for the use of Edward L. Thomas is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness, the Honorable William J. Allen, District Judge of the

United States for the Southern District of Illinois, at Springfield, in said district, this twenty-second day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-first year.

WILLIAM J. ALLEN,
U. S. Dist. Judge.

Service of the foregoing citation is hereby accepted this 22d day of April, 1897.

G. A. KOERNER,
Att'y for Def't in Error.

761 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

No. 414.

THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY for the Use of EDWARD L. THOMAS, Plaintiff in Error,
vs.
SAMUEL H. LEATHE.

Error to the Circuit Court of the United States for the Southern District of Illinois, Southern Division.

Before Woods, Jenkins and Showalter, Circuit Judges.

This action was brought by the Belleville & St. Louis Railway Company, the plaintiff in error, for the use of Edward L. Thomas against Samuel H. Leathe, the defendant in error, upon an alleged promise of the latter to the Railway Company named to pay the Company's indebtedness, including one of $60,000. to Thomas. The first count of the declaration alleges the promise and the consideration upon which it was made and the existence and non-payment of the debt. The second count, in addition to the averments of the first, alleges that at the September Term, 1893, in the Circuit Court of St. Clair County, Illinois, Edward L. Thomas brought an action against the plaintiff to recover the amounts so due him; that the plaintiff caused the defendant to be notified of the pendency of that action and authorized him to use its name in defending the same; that in pursuance of the notice the defendant employed counsel, filed pleas and entered upon the defense; that the issue in that cause was whether the amount claimed by Thomas was then due and payable to him; that upon the trial upon evidence intro-
762 duced by both parties the Court gave judgment for Thomas for $53,022.23, which judgment is in full force and remains unpaid. The third count, besides repeating the averments of the first and second alleges that while the action in the Circuit Court of St. Clair County was pending for trial the defendant Leathe, in his own name and in the name of the plaintiff and the Belleville City Railway Company, to which the property of the Belle-

ville & St. Louis Railway Company had been transferred, filed in said Court a bill for an injunction to restrain Thomas from recovering judgment against the plaintiff upon said indebtedness; that among others one of the issues made by the bill and answer thereto was whether the amount claimed by Thomas from plaintiff was then due and payable and whether the defendant, by reason of a certain deed and the consideration therefor, had assumed the payment of the plaintiff's debts including that to Thomas; that a full hearing was had upon that issue and it was then and there fully adju-cated, the injunction denied and the bill dismissed; that thereupon judgment was rendered in the action at law in favor of Thomas for the sum above named; that it was then and there adju-cated that the said sum was due and payable to Thomas and that the defendant had assumed the payment thereof; all which the plaintiff offered to prove by the record of the proceedings, judgment and decree referred to. The only plea interposed was the general issue. At the hearing the plaintiff dismissed the first count of the declaration, and in support of the other two put in evidence transcripts of the record of the judgment at law and of the decree in equity in the state court. The transcript of the chancery suit contains the evidence on which the decree was based. No other evidence was offered and thereupon the defendant moved the Court, which by an agreement in writing was trying the case without jury to exclude the evidence offered. That motion the Court afterwards sustained and gave judgment for the defendant. The ex-
763 clusion of the evidence is shown by proper bill of exceptions, and error is assigned upon the ruling. Among the authorities cited on behalf of the plaintiff in error are: Durant *v.* Assex Co., 7 Wall. 107; Aurora City *v.* West, 7 Wall., 102; Cromwell *v.* Sack Co., 94 U. S. 351; Lyon *v.* Perin & Gaff Mfg. Co., 125 U. S. 698; Outram *v.* Morewood, 3 East, 346; Freeman on Judgments 249, 270; Black on Judgments, 548, 614.

Woods, Circuit Judge, after the foregoing statement, delivered the opinion of the Court:

A fuller statement of the facts is not necessary to an understanding of the propositions of law on which our decision must turn. It may be that by reasons of the facts alleged the defendant in error was estopped by the judgment at law to deny the amount of the indebtedness of the Railway Company to Thomas, but the question of his personal liability to pay that debt was not an issue in that action and therefore could not have been concluded by the judgment. The proposition on which chief reliance is placed by the plaintiff in error is that the liability of the defendant in error to pay the debt was determined by the decree in the chancery suit.

Together with the various other matters of defense, set up in the answer to the bill in that case, the promise of the defendant in error on sufficient consideration to pay the debts of the Railway Company including that to Thomas was definitely averred, and the bill having been dismissed after a hearing upon the merits it is insisted that the decree of dismissal is an adjudication between the

parties of all the issues and therefore a conclusive determination of the alleged liability of the defendant in error. The proposition is not sound and is believed to be without support in the decided cases. It is of course true, and the doctrine is everywhere recognized, as declared in Durant *v.* Essex Co., 7 Wall. 107, that a decree in absolute terms dismissing a bill is "an adju-cation of the merits of the controversy," but that does not mean that such a decree must be regarded as establishing conclusively the
764 truth of all matters of defense alleged, when more than one defense appears to have been pleaded. "It is a general rule that a valid judgment for the plaintiff definitely and finally negatives every defense that might and should have been raised against the action," Black on judgments, 754; but the converse, that a judgment or decree for the defendant establishes the truth of all defenses pleaded, no matter how many or various, is not true. The authorities on this point are consistent, though in respect to the burden of proofs and perhaps other phases of the subject they are not in entire harmony; Van Fleet on Former adjudications, 279. For the present purpose it is enough to quote a passage from the opinion of the supreme Court in Purcell *v.* Place, 94 U. S. 606, 608;

"It is undoubtedly settled law that a judgment of a Court of competent jurisdiction, upon a question directly involved in one suit, is conclusive as to that question in another suit between the same parties. But to this operation of the judgment it must appear, either upon the face of the record or be shown by extrinsic evidence, that the precise question was raised and determined in the former suit. If there be any uncertainty on this head in the record, —as, for example, if it appear that several distinct matters have been litigated, upon one or more of which the judgment may have passed, without indicating which of them was thus litigated, and upon which the judgment was rendered,—the whole subject-matter of the action will be at large, and open to a new contention, unless this uncertainty be removed by extrinsic evidence, showing the precise point involved and determined. To apply the judgment, and give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible."

In Washington Gas Light Company *vs.* District of Columbia, 161 U. S. 316, 329, where Purcell *v.* Place and other cases are cited, it is said:

765 "The elementary rule is that for the purpose of ascertaining the subject-matter of the controversy, and fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit may be examined."

The judgment below is affirmed.

766 STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

To Hon. Alonzo S. Wilderman, Attorney for Above Named Defendant:

Please take notice that on the 19th day of September, 1898, the plaintiff will sue out of the Clerk's office of said Court a commission pursuant to the Statute, to take the depositions of Samuel H. Leathe, Lucien M. Chipley and John M. Holmes, all residing in the City of St. Louis, State of Missouri, to be read in evidence on the part of the plaintiff in this case, on the trial of such cause, such depositions to be taken on oral interrogatories before Edgar R. Rombauer, as Commissioner, in the Roe Building Southwest corner Broadway & Pine Sts., St. Louis, Missouri on said 19th day of September, 1898, at which time and place you may appear and cross examine such witnesses, if you shall see fit so to do. Such examination to begin at 10 o'clock on said day, and continue from day to day until completed.

G. A. KOERNER,
Attorneys for Plaintiff.

Received copy of above notice this 8th day of September A. D. 1898.

A. S. WILDERMAN,
Attorney for Defendant.

767 STATE OF ILLINOIS, *St. Clair County, ss:*

The People of the State of Illinois to Edgar H. Rombauer, Greeting:

Whereas it has been represented to us that Samuel H. Leathe, Lucien M. Chipley and John M. Holmes material witnesses of a certain cause pending in our Circuit Court, in and for the county of St. Clair aforesaid, between Samuel H. Leathe Plaintiff and Edward L. Thomas Defendant and that the said witness resides at St. Louis, Missouri, Now, know ye, That we, in confidence of your prudence and fidelity, have appointed your Commissioner to examine the said witness and do therefore authorize and require you to cause the said witness to come before you on the 19th day of September A. D. 1898, at 10 o'clock in the forenoon of said day at Roe Building South-west corner Broadway and Pine Streets, St. Louis Missouri, and diligently to examine the said witness on the oath or affirmation of the said witnesses by you, first duly in that behalf administrated and faithfully to take the depositions of the said witnesses upon Interrogatories to be propounded to the witness orally, both on the

part of the said plaintiff, and of the said Defendant, and the same when thus taken together with this Commission, and the said Interrogatories, together with this Commission and the said Interrogatories, to certify unto our said Circuit Court of St. Clair County, with the least possible delay.

Witness: Thomas May, Jr., Clerk of said Court, and the seal thereof at Belleville in said County, this 19th day of September, A. D. 1898.

[SEAL.] THOMAS MAY, JR., *Clerk*,
By PHIL H. SOPP, *Deputy*.

768 The deposition of JOHN M. HOLMES of the City of St. Louis, Missouri, a witness of lawful age, produced sworn and examined upon his corporeal oath on the 19th day of September, 1898, at the office of Edgar E. Rombauer, 611 Roe Building south-west corner Broadway and Pine Streets, in the City of St. Louis, Missouri, by me, Edwar R. Rombauer, a commissioner duly appointed by a *dedimus potestatem* or commission, issued out of the Clerk's office of the Circuit Court of St. Clair County, in the State of Illinois, bearing teste in the name of Thomas May, Jr., Esq., Clerk of said Circuit Court, with the seal of said Court affixed thereto, and to me directed as such commissioner for the examination of the said John M. Holmes, in a certain suit, and matter in controversy now pending and undetermined in the said Circuit Court, wherein Samuel H. Leathe is plaintiff and Edward L. Thomas is defendant, on behalf of the said plaintiff, upon oral interrogatories and cross-interrogatories, that said JOHN M. HOLMES being the first duly sworn by me as a witness in the said cause, previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between said plaintiff and defendant as far as he should be interrogated, testified and deposed as follows:

769 STATE OF ILLINOIS, *St. Clair County, ss:*

In Circuit Court, September Term A. D., 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Deposition of JOHN M. HOLMES, who, being duly sworn, testified as follows:

Direct examination by Mr. G. A. KOERNER:

Q. What is you name?
A. John M. Holmes.
Q. Where do you reside, Mr. Holmes?
A. St. Louis.
Q. What is your business?
A. Lawyer.

Q. How long have you been practising your profession?
A. Thirty years next month.
Q. Are you acquainted with the parties to this suit, Samuel H. Leathe and Edward L. Thomas?
A. Yes, sir.
Q. Are you acquainted with Charles W. Thomas?
A. Yes, sir.
Q. Bart S. Adams?
A. Yes, sir.
Q. Lucien M. Chipley?
A. Yes, sir.
770 Q. Were you acquainted with Captain William A. Adams in his lifetime?
A. Yes, sir.
Q. Did you know him well?
A. Very well.
Q. How long did you know him?
A. Well, I knew him about twenty two or three years.
Q. Were you ever his attorney?
A. I have been so for about twenty years, fifteen or twenty—somewhere along there.
Q. Is he dead?
A. He is.
Q. When did he die?
A. He died, I can't tell the exact date—it was after the fall of '90 and before the fall of '92, in there somewhere—spring of '91 probably. The Probate Court records will show the exact date, but my recollection is it was early in '91.
Mr. THOMAS: The last day of March.
A. Was it the last day of March?
Q. Do you know anything of Captains Adams having any connection with Mr. Thomas in trying to build a railroad into Belleville?
A. Yes, sir, I know that prior to the death of Captain Adams, Mr. Thomas, and possibly some other associates of his,—Mr. Edward L. Thomas, I mean, had started to build a railroad from East St. Louis—I think the original plan was to some coal mines there somewhere—I don't think the original plan contemplated going to the City of Bell-ville but I am not sure about that. It was known as the Belleville & St. Louis Railroad Company, and it had progressed to a certain extent at the time when Captain Adams died. Captain Adams had invested in it some twenty to twenty-five thousand dollars, I don't know the exact amount, and he held, as I recall it, the bulk of the stock of the road and a large part, I knew what part, of the bonds that were issued. The stock of the road, I have forgotten the exact amount, but the bonds I think were,—well, I have forgotten
771 the amount—bonds to quite a large amount had been issued but had never been negotiated, so far as I know. That was the condition of affairs when Captain Adams died.
Q. Were you after his death also one of the representatives of his estate?
A. Attorney for them, yes, sir.

Q. Who succeeded him?

A. His wife and son. He had only one child, his son, Bart S. Adams, and he left a wife who was administratrix of his estate.

Q. Do you know about how much money Captain Adams had put into that enterprise?

A. Not exactly, but between twenty and twenty five thousand dollars, but I wouldn't swear to the exact amount.

Q. Did the estate of Mrs. Adams and Bart S. Adams, her son, invest any more money in the enterprise after the death of Captain Adams

A. No, they refused to invest. I will qualify that by saying that I think that some small bills which Captain Adams had agreed to pay in his lifetime had been paid, but no further advancement in the line of the enterprise.

Q. What was your employment as attorney in regard to that twenty five thousand dollars which Captain Adams had invested?

A. To collect it back in any way that I could.

Q. Was it upon your advice that they declined to put in any more money?

A. Yes, sir.

Q. Now, at that time, after Captain Adams' death, what was Mr. Thomas trying to do in regard to the road?

A. Mr. Thomas was trying to complete the road and find somebody to succeed Captain Adams in the matter.

Q. That is, in order to proceed it was necessary to find somebody that would put up the money.

A. Yes, sir.

Q. When did you first learn of Mr. Leathe in connection with this matter?

772 A. I don't know the exact date—early in the year '93—January, probably.

There had been other attempts prior thereto and I may possibly get them a little confused in my mind.

Q. Do you know of the contract of January 24th, 1893, that was made between Mr. Leathe Mr. Chiplay, Mr. Thomas and Mr. Adams?

A. Yes, sir, I know of it.

Q. You spoke to all the parties in relation to that contract, did you not?

A. Oh, I think so, Mr. Koerner. I can't recall it at this lapse of time exactly what talk I had. I know that I was familiar with the terms but the exact source of familiarity I couldn't now give you. That was nearly six years ago.

Q. You may state the general understanding between the parties in regard to that?

A. The substance of the contract was, as I understood it—of course it was afterwards reduced to writing—but, as I understood it at that time, Mr. Leathe was to put in the money which was necessary to complete the road; the road was then to be bonded, the bonds sold out, from the proceeds of the bonds Mr. Leathe was to be first paid the money which he had put in to complete the road, and after that, if sufficient of the proceeds was left, Mr. Thomas and Mr. Adams,

and possibly some others, I am not sure, were to be paid what they had advanced, the schedule of what they had advanced being reduced to writing by Mr. Thomas and submitted to Mr. Leathe.

Q. That applied also to the coal enterprise?

A. No, sir. At first I didn't know anything about the coal enterprise at that time. That was simply in reference to the railroad. Never was any contract in regard to the coal enterprise so far as I ever went.

Q. Well, the coal enterprise was to go hand in hand with this, was it not? That was also——

773 A. I don't know what you mean by that. All I knew was they were to organize a coal company, but I did not understand that there was to be any such arrangement in that with reference to the coal company. The only parallel arrangement between the two, so far as I know, and so far as I knew, was that the distribution of stock between the two concerns was to be the same, but as I understood it then, and as I understand it now, the parties contributing to the assets of the coal company were to be paid directly in bonds, were to stand on a par as between themselves all the way through, but in reference to the railroad company, Mr. Leathe's money was to have the preference over that of Mr. Thomas and Taylor and Adams.

Q. You call that the agreement?

A. The proportions of the stock shall be maintained. I say that I understood that they were to get exactly the same amount of stock—that is the same proportion of stock in the coal company as in the railroad company. The agreement does not recite the priority of one or the other as to the capital contributed, nor did I ever hear of any such agreement.

Q. Mr. Leathe was to go ahead and build the road, and was to go ahead and acquire coal lands and buy out the different interests of the Western Coal & Tow Company too, was he not?

A. He was to go ahead and complete the railroad. He was to acquire coal lands, and was to buy out both the Griffith and Adams interests in the tugs and barges of the Western Coal & Tow Company. He was to *to* buy those tugs and barges and contribute them to the coal company.

Q. It was contemplated in the first instance that the whole thing was to be done under one charter, and the coal business and the railroad business all together.

A. I don't know whether it was or not. No such statement was ever made to me. It was contemplated at one time, as I afterwards understood, not that they should be run under the same charter, but that the parties contributing to the assets of the coal company should be paid by bonds of the railroad company endorsed by the coal company. Not at the time but I understood afterwards, that there had been some such understanding.

774 Q. Where was Captain Adams' stock and bonds in this railroad company at this time, before Mr. Leathe got hold of it?

A. My impression is that the bulk of them were with Mr. Thomas,

but I am not sure of that. I will say that Mr. Thomas had made several attempts theretofore to interest different parties, and one of the conditions was, as reported by Mr. Thomas to me, that each one had a certain proportion of stock and certain proportions of the bonds, and they were to be transferred by Adams to me through Mr. Thomas from time to time, quite a large quantity, aggregating some amount—I don't know the number, and I don't know where they were but I presume in the possession of Mr. Bart S. Adams.

Q. What was the purpose of Mr. Thomas holding those bonds and stock?

A. I understood the purpose was to make arrangements by which the road could be completed and we could be paid off.

Q. Mr. Holmes, I will ask you whether you were present at a meeting which was held on the 25th day of March, 1893, at the office of Charles W. Thomas in Belleville, a meeting of the Belleville & St. Louis Railway Company and the Belleville City R'y Company both stockholders' and Directors' meeting, I think.

A. Yes, sir I was present.

Q. How did you happen to be present there, Mr. Holmes

A. Mr. Adams told me that the meeting was to come off there and I went over there with him, at his request.

Q. Now this railroad that Mr. Thomas and Captain Adams were building you have stated was called the Belleville & St. Louis Railway Company.

A. I would call that the name of it, yes, sir.

Q. Now, when did you first become acquainted with the Belleville City Railroad Company

A. Well, that was about—I don't know how long—a week or two before that meeting—possibly two or three weeks before that meeting I first heard of the Belleville City Railroad charter.

Q. What did you do about that, do you remember? Did you examine into that charter?

775 A. Yes, sir. I was asked by Mr. Leathe to examine into it and report whether or not it was advisable to acquire that charter for the purpose of building this railroad—or rather, continuing the building of it under that charter instead of keeping on with their present one, whether it was advisable to be governed by the acquisition of that charter. I examined it for that purpose.

Q. What conclusion was reached?

A. It seemed my conclusion was not the conclusion of my client. I reached the conclusion that not a thing on earth would be gained by it, and so reported.

Q. What was done?

A. Mr. Leathe then refused to purchase the charter. Mr. Chipley, as I understood it—now, mind, this is hearsay, I am not speaking of my own knowledge—insisted that the charter should be procured. At any rate, passing that, I was informed that an arrangement had been made to purchase the charter, which was owned by Mr. Charles W. Thomas, and I was informed that it was to be purchased by Mr. Edward L. Thomas.

Q. Was it to be used instead of the charter of the Belleville & St. Louis Railroad Company?

A. Substituted that charter for the other, yes, sir.

Q. Was that part of the purpose of the meeting of March 25th?

A. Yes, sir, to affect this substitution and to arrange for the distribution of stock, as agreed in January, and to make an arrangement for the issuing of the bonds.

Q. You say "as agreed in January," meaning the agreement of January 24th?

A. Yes, sir, what is known as the agreement of January 24th. At that time it was the agreement that Mr. Leathe should have a certain amount of stock and certain bonds should be used, &c., but it had not been carried out.

776 Q. Then the purpose of your going to Belleville at that meeting was to carry out the arrangement of January 24th., as I understand?

A. That was the understanding.

Q. Well, was that carried out? If so, in what way?

A. Yes, sir, I think so. Prior to that time the Belleville City Railway stock had been increased by proceedings in the company itself to an amount sufficient to cover the purpose of the enterprise, five hundred thousand dollars, if I recall it correctly. Then it was necessary to have some one subscribe that stock, and it was necessary to transfer the property of the Belleville & St. Louis Railway Company to it. The method adopted was that the Belleville and St. Louis Railway Company, leaving its stock just as it stood and its bonds just as it stood, made a conveyance to Mr. Leathe. Mr. Leathe then in turn made a conveyance to the Belleville City Railway Company and subscribed for all of the stock, except some outstanding shares which were necessary to keep up the organization. As a consideration for that conveyance then the proportions to which the different stockholders were entitled under the January agreement were figured out, and Mr. Leathe duly transferred to each party the stock that was coming to him under that agreement, only at Mr. Thomas' request he transferred a portion of his stock to Mr. Charles Thomas and, I think, some to Mr. Needles, I wouldn't be certain about that—at any rate he transferred as directed by Mr. Thomas, Edward L. Thomas. I saw that Mr. Adams got his proportion and that satisfied me.

Q. The stock in the Crown Coal and Tow Company was adjusted in the same manner, was it not—that is, same proportion?

A. The same proportion, yes, sir. The Crown Coal & Tow Company had two-fifths of the capital stock of the railway company and each person got two shares of coal stock for every five shares of railroad stock.

777 Q. Well, what further was done or was necessary to be done —of course this assignment of stock in the proportion you have stated was without reference to what they had contributed?

A. No reference whatever to that.

Q. Now, what further was done or necessary to be done in regard

to transferring the property of the Belleville & St. Louis Railway Company to the Belleville City Railway Company?

A. Nothing further than Mr. Leathe to make his conveyance, which he did.

Q. Well, there was a conveyance made to him first?

A. I have already so stated. The Belleville & St. Louis Railway Company conveyed to Mr. Leathe; Mr. Leathe subscribed to all of the shares of Belleville City Ry. Co. except a few odd shares for organization purposes, and then the transferred property which he had acquired from the Belleville & St. Louis Railroad Company to the Belleville City Railway Company. The stock of the Belleville City Railway Company was issued to Mr. Leathe, and Mr. Leathe divided it out amongst the various parties to the January agreement in the proportions called for by that agreement, save and except in the case of Mr. E. L. Thomas. He conveyed certain portions of it to other parties as required by Mr. Thomas.

Q. Were those deeds all ready when you came over there?

A. Yes, sir, they were all prepared.

Q. Who had prepared them?

A. I presume Mr. Charles Thomas, although I couldn't testify as to that. They were in his possession.

Q. Then, as I understand you, the title of the property of the Belleville & St. Louis Railway Company was transferred to the Belleville City Railway Company, using Mr. Leathe as a conduit.

A. Yes, sir.

Q. Mr. Holmes, at that time, at that meeting, was there anything said or done to change the relation of the parties as fixed by the agreement of January 24th, 1893?

A. Nothing that ever came to my knowledge.

778 Q. Were you there about all the time of these meetings?

A. Yes, sir.

Q. Was there anything said about Mr. Leathe being compelled to pay the debts of the old company belonging to Thomas and to Adams otherwise than as fixed by the agreement of January 24th?

A. Most assuredly not. I would have heartily rejoiced to have made any such agreement.

Q. Your purpose was to collect the money for Adams?

A. My purpose over there was to collect this twenty five thousand dollars due to Adams. I was going over there under an arrangement by which the money was to be paid if the road could first pay out the money advanced for its completion, and I would have been exceedingly glad to have obtained an arrangement, an unconditional agreement, whereby that twenty five thousand dollars would be paid. They could have had all the stocks and bonds that I owned in the company—or that Captain Adams owned—for such an agreement;—and a bonus in addition.

Q. You were there then as attorney for that estate, and would have been greatly interested to have such an agreement made?

A. Very keenly interested.

Q. You say there was nothing of that sort?

A. Nothing that I ever heard.

Q. If there had been such an arrangement, Mr. Holmes, contemplated——

Mr. THOMAS: That is not a proper question and I object.

Q. Well, perhaps, not precisely, but there was nothing of that sort incorporated in the agreement.

A. Oh, no.

Q. I believe you said you were a awyer?

A. Yes, sir.

Q. When did you first hear, if at any time, that it was claimed that the agreement of January 24th had been changed by Mr. Thomas?

A. I can't recall the date. It was sometime afterwards during the trial of the suit in Belleville.

779 Q. What suit?

A. I have forgotten which one that first came up there. It was in the trial of a suit in Belleville.

Q. Did you know at the time, that is, March 25th, 1893, whether Mr. Leathe was financially responsible?

A. Yes, sir, he was a very wealthy man.

Q. His promise to have paid the debt would have been of value, would it?

A. Would have been of very great value.

Cross-examination.

By Mr. EDWARD L. THOMAS:

Q. You were never present, Mr. Holmes, at any of the meetings held between Mr. Leathe, Mr. Chipley, Charles W. Thomas and Edward L. Thomas in regard to this matter?

A. No, sir.

Q. You have no personal knowledge of anything that took place prior to the meeting of March 25th.?

A. No, except so far as it was reported to me.

Q. You never knew anything of it yourself?

A. No, sir.

Q. Now, Mr. Holmes, isn't it also true that at the death of Captain Adams, or shortly after that, the Adams heirs conveyed by deed all of the property that he had acquired in the railroad enterprise to Edward L. Thomas?

A. I have no personal remembrance of the fact, but I have no doubt that such is the fact.

Q. Isn't it true also that they turned over to him everything, the entire management and control and handling of the affair from that time on?

A. Yes, sir.

780 Q. Isn't it also true, Mr. Holmes, that Edward L. Thomas did very little consulting with yourself in regard to these matters?

A. I don't know—I thought it was a good deal.

Q. After the time of the transfer of the property?

A. Yes, sir.

Q. Was there ever anything said by me to you regarding the meetings that were being held by Mr. Leathe and Mr.——

A. Oh, no, I refer to these previous attempts.

Q. Of course I came to you after I tried to make the attempts, but nothing of that kind ever took place now, after——

A. In reference to the arrangement with Mr. Young, no, I never had any talk with you in regard to the matter.

Q. And were never present at any one of the meetings?

A. Not that I can recall at the present time, Mr. Thomas.

Q. Are you not mistaken, Mr. Holmes, when you say there was no change made in what you call the January 24th arrangement on the 25 day of March at that meeting?

A. No, except so far as I say the changes made were the substitution of one charter for another and the change made in the distribution of the stock.

Q. Was there not also a new agreement made and signed by Mr. Leathe?

A. Not that I am aware of.

Q. Now, Mr. Holmes, did you have occasion to read the deed of the Belleville and St. Louis Railroad Company to Samuel H. Leathe?

A. Oh, I presume so. I can't recall having done so but I have no doubt that I did.

Q. Did it recite the consideration?

A. I don't recall—it recited a nominal consideration, as I recall it.

Q. Any other consideration?

A. All I know is it didn't recite any agreement to pay me twenty-five thousand dollars consideration. I can't recall that it recited any other consideration than a nominal one, no, sir.

781 Q. You say it was simply a transfer of the property from the Belleville & St. Louis to Mr. Leathe, using him solely as a conduit?

A. Yes, sir.

Q. Now, Mr. Holmes, there appears in the deed this consideration: "For and in consideration of the sum of one dollar in hand paid, and other valuable considerations moving from him to it," (meaning the grantee) "this deed is made."

A. Yes, sir.

Q. Was there anything said about those other valuable considerations at that time?

A. Nothing of the sort was suggested. It wasn't for himself—the consideration was that he was to at once reconvey to the Belleville City Railway Company.

Q. The Belleville and St. Louis Railway Company was divesting itself of all its property?

A. Yes, sir.

Q. There was a large indebtedness of the Belleville & St. Louis Railway?

A. Yes, sir.

Q. To whom?

A. I don't know. I don't know who held the bonds.

Q. There was an indebtedness to the Adams' estate and to me?

A. Yes, sir, oh, yes.

Q. Don't you know as a matter of fact that there was a great deal of trouble and dispute regarding the purchase of the Belleville City charter?

A. Yes, I so understand.

Q. And when you say that this stock, which you say was transferred by my request to Charles W. Thomas, you mean that that was part of the arrangement that was made?

A. All I mean is this, and all I know is this, I understood that Mr. Leathe and the other parties refused to pay anything
782 whatever for that Belleville City charter; I understood also that they made an arrangement by which they were going to force you to pay for it out of your stock; they informed me that that was accomplished, and therefore you directed your stock to be issued to your brother Charlie and——

Q. Did Mr. Leathe inform you of the method that he took to do that?

A. No, except that he told me he wouldn't pay anything for it.

Q. Didn't he tell you also that he wouldn't go into the enterprise without it?

A. No, sir, he never told me.

Q. Now, Mr. Holmes, don't you know as a matter of fact that on the 25th day of March, 1893, the contract that you speak of—that the contract had not been signed by either Leathe or Chipley?

A. I understood since from Mr. Leathe's testimony that that is the fact. I wasn't aware of it at that time.

Q. Now, Mr. Holmes, you went over there, you say, as the attorney for the Adams' estate?

A. Yes, sir.

Q. Didn't Mr. Leathe also ask you to take charge of his matters and attend to them for him?

A. He asked me on the train going over if I would act for him.

Q. What did you do?

A. I told him yes.

Q. And you did then?

A. Well, I don't know how far you would call it so?

Q. Well, you examined these papers for him.

A. Yes, sir.

Q. And advised him—took him off to one side and talked about the matter?

A. No, sir.

Q. Didn't you go to the end of the office there and advise——

A. I know—I think I asked him what the agreement was, and read it, and asked him if that was his agreement and he said
783 yes, and that was all. Bear in mind I had no consultation with him.

Q. And you had no formal knowledge, except by mere information, of the preceding act of the parties?

A. Except through Mr. Adams, and possibly I might have had some other. I can't recall the various conversations, it was so long ago.

Q. Now, when you talk of the agreement that Mr. Koerner asked

you about, didn't you testify in the case that was tried at Belleville, Samuel H. Leathe and the railroad companies *vs.* Edward L. Thomas, injunction?

A. I have forgotten, I suppose I did.

Q. Didn't you testify regarding that question as follows: "Well, I can only say of there was any agreement there on the part of Mr. Leathe to pay the debt of the Belleville & St. Louis Railway, I never heard it; I can't state further than that." Is that correct?

A. Yes, sir.

Q. You don't now intend to say any more than just what you there stated, that you "can't state any further than that."

A. Oh, no, sir.

Q. In other words, then your knowledge didn't go any further as to what had taken place before—all you say is, you didn't hear anything said about it at that meeting?

A. Or from various parties with whom I had talked about it before and since——

Q. You never heard of it?

A. No, sir.

Q. So when this deed was presented there was nothing said about the "other valuable considerations" at all?

A. No. Of course I knew what they were. It had been explained to me exactly what was to be done—that Mr. Leathe was to immediately transfer the property of the Belleville City Railway; the Belleville City Railway Company was to issue stock to him; and the Belleville City stock was to be divided among the parties to the
784 January agreement instead of the Belleville & St. Louis Stock, and the proceedings to proceed under the charter of the Belleville City Railway and not under the charter of the Belleville and St. Louis Railway; and with the exception of that change of charters (and some things to be done to accomplish that), there was no change in that contract. That was all fully explained to me by almost everybody as the agreement. From time to time I think I saw Mr. Charlie Thomas—once, probably twice—in reference to this same charter, how it was to be accomplished. I was over to his office, read the charter, read the proceedings all through, and so forth. Now I can't undertake at this length of time how I got my own information, but that was the information at that time. It was my information before and it was my information since.

Q. Now, you say this without knowing, without remembering that there was a new agreement made—made and entered on the records of this company—and signed?

A. I undertake to say—what you mean by your new agreement I undertake to say wasn't a new agreement but was the agreement that I went over there to see signed.

Q. What is your recollection of that agreement?

A. My recollection is that the Belleville & St. Louis Railroad Company were to issue their bonds and deliver them to Leathe; he was to use the proceeds for building the road; was to hold the balance as trustee of the company.

Q. Was there anything said about the price of them?

A. Yes, sir. He was to sell them at such terms as the Board might agree upon, and such as he used for paying for the property he was to account for—just like the stereotyped agreement made in such cases.

Q. Now, then You have been attempting—I suppose you know that Mr. Leathe sold the bonds, do you not?

A. I know he sold out the whole enterprise.

785 Q. Bonds, stocks and all?

A. Well, I never did know exactly what he did. I know what he did was—he disposed of all his stock, all of the Adams' stock which had been assigned to him as trustee, and all of the bonds, and all of Taylor's stock which had also been assigned, and all of the bonds for a large sum of money and pocketed that sum. I know that to be a fact.

Q. Have you since that time endeavored to collect amounts that were due the Adams' estate from him?

A. Yes, sir?

Q. What has he done as to making any settlement of those matters?

A. Never has done anything except refuse to make one.

Q. There was no litigation between the Adams' estate and Mr. Leathe prior to the time of his sale?

A. No.

Q. All was friendly?

A. Yes, sir. The only unfriendliness rose out of his refusal to pay over anything.

Q. You don't know whether he used any of these bonds or not, do you?

A. I don't know anything about that. I have heard incidentally that use was to be made of some of them for the purpose of the railroad, but whether true or not, of course, I don't know.

Redirect examination:

Q. You spoke of having brought suit against Mr. Leathe for the Adams' heirs. That suit was based upon the January agreement, was it not?

A. Yes, sir, the only agreement Adams had with him that I know of in reference to the railroad.

Q. That was for an accounting, claiming that under that contract he should show what he did in the completion of that road?

786 A. Yes, sir.

Q. If there was a surplus then it should be applied as provided in that contract?

A. Yes sir.

Q. In payment of the debts of Thomas and Adams?

A. Yes, sir.

Recross-examination:

Q. I want to inquire about this coal matter—I forgot that in my cross-examination. There was no arrangement, you say, or agreement by which the property put into the coal company by

the different parties was to be paid for after Mr. Leathe got his money out of that?

A. No, sir, never heard of any such.

Q. That was on an equal footing in assessing?

A. Yes, sir, as to the property—the stock being based not upon the amounts contributed to the assets of the company by the various parties but based solely by their holdings in the railroad.

Q. Now, don't you remember also, Mr. Holmes, that after that—you say that this property was to be paid for by railway bonds under the first arrangement?

A. Well, I say that I didn't know at the time. The first I heard of that was, I think, the day we held the meeting there, the 25th of March, 1893, and as soon as it was called to my attention I stated that that was an absurdity, that the coal company had no authority to endorse any such bonds, nor did the Railroad Company have any power to issue them. I never heard of that proposition from that time on.

Q. You hear afterwards, however, of the coal company issuing bonds?

A. Yes, sir.

Q. You heard also of the division of those bonds according to the property that had been put in at that time?

A. Yes, sir, I was present at that meeting.

Redirect examination:

787 Q. There is another matter I wish to inquire about. You say it developed afterwards that Mr. Leathe had not immediately signed the contract of January 24th?

A. It didn't develop immediately afterwards. I first heard of it at the trial of one of the suits at Belleville when that question was asked Mr. Chipley, and I believe he stated at that time that they had not signed that agreement.

Q. You know also, do you, that he acted under that agreement?

A. Yes, sir. That he had done all the things called for by the terms of that agreement. Under the terms of the agreement he was to advance money that was to take up some bonds that belonged to Mrs. Johnson, I think, which he did; he advanced money to take up some which had belonged to Thomas or which Mr. Thomas had put into pledge in the Bank in Belleville; he advanced money to pay for the grading; he had received the stock and had distributed it in accordance with the terms of the January agreement.

Q. In other words, he had entered into the active execution of the agreement?

A. Yes, sir.

Q. Do you remember he bought a lot or two for the railroad on the Mississippi River?

A. Oh, yes, I knew he invested in property according to the agreement.

Q. And purchased coal lands?

A. Yes, sir.

Q. You are not attorney for Mr. Leathe, I believe?
A. Not by a very large majority.
Q. You have engaged in litigation adverse to him?
A. Adversly to him for my clients and also personally for myself. I am inclined to think that most people would be that had any dealings with him.

Signature waived.

788 I, Edgar R. Rombauer, of the City of St. Louis, and State of Missouri, a commissioner duly appointed to take the deposition of the said John M. Holmes, a witness, whose testimony is contained in the foregoing deposition, and whose signature thereto was waived by counsel for the respective parties litigant, do hereby certify that previous to the commencement of the examination of the said John M. Holmes, as a witness in the said suit between Samuel H. Leathe, plaintiff, and Edward L. Thomas, defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said Samuel H. Leathe, plaintiff, and the said Edward L. Thomas, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken in my office, 611 Roe Building, South-west Corner Broadway and Pine Strets, in the City of St. Louis, Missouri; that by consent of counsel said deposition was taken in shorthand and afterwards the notes were correctly transcribed, and the signature of the witness thereto was waived by Counsel.

EDGAR R. ROMBAUER,
Commissioner.

789 J. M. Holmes, sworn for the complainants, testified as follows:

Direct examination by Mr. Koerner:

Q. What is your name?
A. J. M. Holmes.
Q. Where do you reside?
A. St. Louis, Missouri.
Q. What is your occupation?
A. Lawyer.
Q. Are you acquainted with Mr. Edward L. Thomas?
A. Yes, sir.
Q. Do you know Charles W. Thomas also?
A. Yes, sir.
Q. Were you acquainted with Captain Adams in his life time?
A. A great many years.
Q. Were you employed by Captain Adams at any time?
A. Yes, sir, I have been his attorney I think for 15 or 16 years prior to his death.
Q. Were you acquainted with the enterprise at that time called the Belleville & St. Louis Ry. Co. and the Crown Coal Co.?
A. Well, I was acquainted with it in a slight way. I never knew

very much about it, except that I knew that Captain Adams had an arrangement over here—I knew in the first place that he had a coal company over here called the Crown Coal Company in which Mr. Thomas, Mr. Taylor and himself were interested, and which was rather a small concern, and I knew also that he was engaged with Mr. Thomas in building a railroad as I supposed for coal purposes, that he always talked to me about, and I was trying to dissuade Captain Adams from going into that; I think Mr. Thomas will testify to that.

Mr. THOMAS: But I was a better pursuader?

A. You were a better persuader than I was.

790 Q. Well, after a while Captain Adams died?

A. He died in the spring of 1891, I think.

Q. Did you become better acquainted with this enterprise after that?

A. I examined into it a little bit more and had a talk with Mr. Thomas and informed him that the design of the Adams' estate was, of the Administrator was, to cease putting in any further, and was to get out what they had in there, was to turn their position fr-m that of builders of railroads into simply creditors of railroads as far as it had gone; I will say that Captain Adams left as sole heirs his wife and one son, who at that time was about twenty-three years old, I think.

Q. That is Bartlet S. Adams?

A. Bartlet S. Adams; and I say from that time on I knew very little about the road; Mr. Thomas was making a great number of efforts to interest other people in it; bonds had been issued, I believe and he had a considerable amount of them as security of the indebtedness which was due the Adams estate. That indebtedness was close to the neighborhood of twenty-five thousand dollars, with interest, amounted to about twenty-seven thousand dollars, and they held a number of bonds as collateral security for that; I know Mr. Thomas tried to make a deal with other persons and get them to take hold of the matter. I don't know that I was particularly informed as to what was going on between the time of Captain Adams' death and some time along in December, or fall last past year.

Q. Are you acquainted with Mr. Samuel H. Leathe?

A. No, sir, not at that time.

Q. Are you now?

A. Yes, sir.

Q. Well, then, your object was to collect this money for the Adams estate?

791 A. Yes, sir, solely; and to get them out of the railroad.

Q. You became aware of the negotiations which were carried on with Mr. Leathe?

A. Yes, sir.

Q. Did you learn of the contract that was made?

A. Yes, sir.

Q. That has been introduced here of January 24th?

A. Yes, sir.

Q. I will ask you whether you were present at the meeting of March 25, 1893, of the Belleville & St. Louis Railway Company?

A. Yes, sir.

Q. What do you know about the City Railway Company?

A. Well, I know this: I knew what the contract was; of course, I knew in the first place it was the idea to get some one to go in there and complete the road and to give the person a lien for the money which they should put in, ahead of other persons; Mr. Thomas told me repeatedly that was the basis of the contract, and no one would go in and but there subject to a lien for the money that had gone in before. I knew that a contract had been made by virtue of which Mr. Leathe was to advance the money necessary for completing that road; that the road was then to be built and bonded for the sum of five hundred thousand dollars, out of the proceeds of the bonds, after payment back to Mr. Leathe of the expenses incurred by the completion of the road, then the remainder of the amount was to be paid to Mr. Thomas and Mr. Adams, and no one else. Such was my understanding of the contract that was made.

Q. Then what occurred afterwards?

A. Then this meeting was called from March. Prior to March 25th, and I met Mr. Chipley; his position in the matter I never did clearly understand, that is, he was paid, as I understood, a commission by Mr. Thomas, as although he was acting then for Mr. Leathe. I never did understand his position in the matter,

792 I understood that they were to arrange to get hold of the Belleville City Railway charter, Mr. Adams told me that and Mr. Chipley seemed to have an interest in it, and Mr. Leathe asked me to come over to Belleville here to the office of Mr. Charles W. Thomas, where the great charter reposed and to examine it and see if the proceedings under it had been regular.

Mr. KNISPEL: You were then the attorney for Mr. Leathe?

A. No, sir, not at all.

Q. Did you comply with the request of Mr. Leathe?

A. I came over with Mr. Leathe and examined this contract in which I was interested, and Mr. Leathe asked me—Mr. Thomas had asked me—I came equally as far as that is concerned—I only state the fact that he was the person who asked me to come over. I went over and examined and reported to him that I did not think there was anything in it that he wanted.

Q. You were representing the Adams estate?

A. I was representing the Adams' estate, and as far as that is concerned I was representing anybody else that was interested in the enterprise. I was the attorney for the Adams heirs who were interested in the enterprise, one of whom was Mr. Leathe, and he requested me to come and make the examination, which I did, and knowing that he was the man who put in the money, I supposed, as a matter of course, he wanted to know what the charter was, and I reported to him, I reported to him about the charter, and I don't think I ever heard him say anything further about it. I heard no more about it until a little while before the 25th of March. I was told by one of the parties, I don't know who, I think Mr. Adams,

that they had concluded to take in the Belleville City Railway charter, and that Mr. Ed. Thomas was to pay for it, that was the information given me.

Mr. THOMAS: Did he tell you I objected to it, too?

A. I cannot recall whether he did or not, but I think, as
793 a matter of fact, that you did, I think we agreed on the matter of this charter.

Mr. THOMAS: I objected all the time.

WITNESS: Then I was informed by Mr. Adams also that a meeting was to be held on the 25th of March, I think, the record will show that, that was for the purpose of taking in this charter. I went over there, and the day before I went over, I am inclined to think, or the morning that I went, while I was waiting for the train at East St. Louis, Mr. Leathe spoke to me and asked me if I would also at that meeting represent his interests. After that time I never had a consultation with Mr. Leathe that I am aware of, and my acquaintance with him was extremely slight, in point of fact I did not know what he referred to. I went over there in Mr. Adams' interest to see that nothing prejudicial to the interest of the Adamses should take place there. Now, the method by which the Belleville City Railway charter was to be taken in was this:

(Objected to.)

Q. What was done to the Belleville City Railway charter?
A. The capital stock was increased from——

(Objected to.)

Mr. THOMAS: That is all a matter of record, everything that was done — here on these books.

Mr. KOERNER: Mr. Holmes, was there anything said outside of that in relation to a change of the existing contracts between the parties?

A. Not a word.

(Objected to.)

Q. Everything that was done was put on the books there?
A. Yes, sir.

(Defendant objects to any further testimony in regard to what transpired at that meeting.)

Q. You heard Mr. Thomas' statement in regard to that; now state the facts.

794 A. Well, I can only say, if there was any agreement there on the part of Mr. Leathe to pay the debts of the Belleville & St. Louis Ry. Co., I never heard it; I cannot state further than that. Had he made such a contract my interest in the railroad would have terminated. I would have entered suit against him at the June term for the amount of the Adams' debt, because I would very much rather take this agreement, as he had large real estate interests in St. Louis.

Q. Your business was to look after the interests of Captain Adams?
A. Wholly so.

Q. That was twenty-seven thousand dollars that this Company owes Captain Adams' estate?

A. Yes, sir; I would have no object in holding the parties to that contract.

Q. Now, while you were present at that meeting representing Captain Adams' estate, you heard no promise of payment of those debts by Mr. Leathe?

A. Most assuredly I did not, that promise would have been very promptly acted upon.

Q. When did you first learn that there was any such promise as that supposed to have been made?

A. When Mr. Thomas stated it in the Court room here; I never heard it before; well not when he stated it in the Court room. I think he set it up in his petition in this case arguing the petition. That is the first time when the arguments had been made.

Q. Have you since that time continued in the employment of the Adams estate?

A. Yes, sir, right straight along. I done a great deal of business for them.

Q. Do you remember any conversation held the latter part of September or in October, in which Mr. Thomas was connected?

A. I do not remember the details.

795 Q. It was in regard to this contract of January 24th, was it not?

A. Yes, sir, I had a conversation with Mr. Thomas in my office; I cannot locate the date exactly. If I could get the day Mr. Chipley was removed as president I could give it exactly.

Mr. THOMAS: That was looking to compromise, and you know you have no business to say anything about that.

A. No, I am not going to speak about a compromise, in that conversation you remember, at that meeting I told you that Mr. Chipley had come to me and wanted to have the stock in the Crown Coal and Tow Company issued; we wanted his stock issued to him at once, and that I had responded to him that he had no right to have that stock, that it might get into the hands of innocent holders, that it should be held for the protection of the parties who had contributed their capital there, and that as soon as the original parties had been protected and the matter had been settled that bonds ought to be issued for the amount that the different parties had put in and secured by mortgage on the road before the stock was issued. Thereupon I told you that Mr. Chipley was claiming under the terms of the contract of January 24th, that he was entitled to it without security. Because it contained the terms that he should have the same proportion in any other company, and entitling him to have his two-fifths issued to him regardless of a question of security, and thereupon requested you——

Mr. THOMAS: That was in the way of compromise.

A. I didn't so understand it, but if you so understood it, I will say nothing further.

Mr. THOMAS: It was so stated to me before I wanted to talk to you.

A. Let me call your attention, Mr. Thomas, it is true that you

came over to talk compromise, and true that we discussed that at some length, but this had no connection with it, I was relating to
796 you Mr. Chipley's position in the matter and that was all there was to it.

Q. Mr. Chipley was insisting upon this contract as late as September or October?

A. Yes, sir, about the last of October, I think; he was insisting upon it that time.

(Defendant objects to this testimony.)

WITNESS: I would say there was no question made at that time about the Company operating under some other contract than that of January 24th.

Mr. THOMAS: Did I not tell you that Mr. Leathe refused to enter into the contract of January 24th?

A. I do not think you told me that until very shortly thereafter.

Q. All that time, too, before?

A. No, not that I recollect.

Q. You have been appearing in this case as counsel?

A. Yes, sir.

Q. For the railroad company?

A. Yes, sir, I have been their general attorney I may say since the last of May, 1893.

Q. The Belleville City Ry. Co.?

A. Yes, sir.

Cross-examination.

By Mr. THOMAS:

Q. Mr. Holmes, you came over that morning when Mr. Leathe met you at East St. Louis and asked you to look after his interests also?

A. Yes, sir.

Q. He employed you to do so as his attorney?

A. No, I do not know as I was his attorney.

Q. You were not an attorney?

797 A. Yes, sir, for the Adams heirs.

Q. And didn't he ask you also to look after his interests?

A. That is all that was said about it one way or another, I believe.

Q. Now, Mr. Holmes, you say that you had a conversation with me at your office over there?

A. Yes, sir.

Q. Did I not say Mr. Holmes, directly to you, did I not write you a letter in which I said I would come over to talk compromise of this matter?

A. Yes, sir.

Q. Did I not in pursuance to that letter come over and talk compromise and wasn't that whole matter regarded there as a compromise?

A. No, sir.

Q. You acting for Mr. Leathe?

A. No, that is not correct.

Q. Didn't you tell me you were employed by him before this?
A. No, I did not, I never was his individual attorney in my life, and am not now.
Q. You are employed by the Belleville City Railway Co.?
A. Yes, sir.
Q. Are you appearing for him in this matter—were you acting for him in compromising this matter?
A. No further than I was acting for the Adamses.
Q. When were you employed by the Belleville City Railway Company?
A. The 1st of May, 1893, the contract was dated that day.
Q. Who employed you?
A. I think Mr. Chipley.
Q. For the Ry. Co.?
A. Yes, sir.
Q. Did Mr. Chipley make the contract for both companies?
A. Yes, sir, the Coal Company and the Railroad Company.
798 Q. Who was present at the meeting March 25th?
A. Well, you were there, Mr. Charles Thomas was there, Mr. Needles was there, Mr. Bart Adams was there, Mr. John Taylor was there, Mr. Samuel Leathe and Samuel H. Leathe both were there, and then there were one or two whom I did not know.
Q. When this contract was made you say it was read aloud?
A. Which contract do you refer to?
Q. Of March 25th?
A. I do not recall that, sir.
Q. When that thing was done?
A. When that resolution was written, yes, sir, it was read aloud.
Q. The resolution of March 25th was read aloud?
A. Yes, sir.
Q. And you examined it?
A. I don't think I examined it, I listened to it.
Q. Did you take it afterwards, did Mr. Leathe take it and hand it to you and ask you to read it?
A. I don't think he did; I either read it or heard it read, I am not quite sure about that.
Q. Did you consult and discuss with Charles Thomas about it?
A. Not that I am aware of.
Q. Did you not suggest an alteration in it before it was entered in the book?
A. Not that I am aware of.
Q. Did you say you did not?
A. I say I do not recollect.
Q. How does it come that you do not recollect those things and recollect others?
A. Because it is a mere matter of indifference whether I did or not as far as that is concerned.
I will say, Mr. Thomas, that I was perfectly aware of the contents.
799 Q. You were asked in East St. Louis by Mr. Leathe to represent him in that meeting?

A. Yes, sir.

Q. And you agreed to do so?

A. Yes, sir, to that extent; I say I never had any consultation with him at all.

Q. He asked you to represent him and you agreed to do it?

A. Yes, sir.

Q. Don't you remember a change that was made in the resolution; it was read first and changed; it read first. Walnut Street, in this town, and was changed to the original city?

A. I could not say that I remember it; I never knew Walnut street or the original city, and certainly it could not have been changed on my suggestion.

Q. Don't you remember that change was made?

A. No, sir, I do not; my impression would be it was the original draft as written, but I could not say that positively.

800 STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, January Term, 1899.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Action of Debt.

Samuel H. Leathe being duly sworn upon his oath says that he cannot safely proceed with the trial of said case before the referee without the testimony of one Lucien M. Chipley who is a resident of St. Louis County in the State of Missouri, living at a suburb of the City of St. Louis called Old Orchard and who is a material witness in behalf of said Plaintiff on the issue presented by the pleas of set off herein filed.

Affiant further states that while said Chipley resides as aforesaid he does business in the City of St. Louis State of Mo. and has an office for the transaction of his business in the Bank of Commerce Building in said City of N. E. Corner of Broadway and Olive Streets.

Said Chipley has frequently promised defendant that he would testify in said case whether called up at Belleville, Ill., or in case his deposition was desired to be taken, in the City of St. Louis and State of Missouri, and informed the defendant that he would at *at* any time attend without the service of a subpœna, either in Court at Belleville or before any commissioner in the City of St. Louis.

Affiant further states that on the 18th day of January, 1899, by his Attorney he gave notice to said Plaintiff that he would on the 30th day of January cause a writ of *dedimus potestatum* or commission to issue from the office of the Clerk of the Circuit
801 Court of St. Clair County, Ill., where said suit is pending to take depositions on the same day at the office of Edgar R. Rombauer as Commissioner at St. Louis, Mo., that is to say at the office of said Rombauer in said City which is in the Roe Building

on the Corner of Broadway and Pine Streets. Prior to said 30th day of January on the suggestion of Lucius D. Turner the referee in this cause, the parties hereto agreed to take such depositions on the 31st day of January instead of the 30th day of January.

Affiant further states that he personally on the 27th day of January at said Chipley's residence notify the said Chipley of the proposed taking of said depositions on the 30th day of January and that he found that said Chipley was sick and unable to attend to said office of said Rombauer on either the 30th day of January, or on the 31st day of January, and found the said Chipley sick, and in a condition which made it evident that it was impossible for him to be present and testify before said Commissioner on the 30th or 31st of January, 1899, and affiant states that said Chipley was unable then to attend on account of sickness.

A Certificate of a reputable physician in attendance upon said Chipley accompanies the return of said deposition which were taken on the 31st day of January before said Commissioner, Rombauer. Affiant expects to have the deposition of said Chipley or be able to take the same within a reasonable time and intends to take the same at the first opportunity, as the health of said Chipley may permit, and expects within 60 days, or by the first of April, 1899, to have said deposition to be used on the hearing of this cause before said referee.

Affiant expects to prove by said Chipley, that he, said Chipley, was cognizant of the entire business transactions between him and said affiant and the said defendant, E. L. Thomas. That he expects to prove, by said Chipley, that he, said Chipley, brought together the Plaintiff and Defendant, was present at every meeting between them, from the time of their first meeting until August 1893 and took part in every conversation between plaintiff and defendant and during said time, and also all conversations between affiant and Charles W. Thomas during the same period, at which the business and affairs relating to the said corporations and affiant's connection therewith were discussed. Affiant expects to prove by said Chipley, that he said Chipley proposed to affiant the purchase of the charter of the Belleville City Railway Co. to be used for the construction of the contemplated railroad in place of the charter of the Belleville & St. Louis R. R. and that said Chipley at the instance of Chas. W. Thomas persuaded affiant to inisst upon the purchase of said charter, but affiant declined to contribute either in money, bond or stock for such purpose.

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That the sole purpose of the meeting of the stockholders and directors of both said Belleville Ry. Co. and the Crown Coal Co. and Crown Coal and Tow Co. which were had on the 25th day of March 1893 was to increase of capital stock of said Crown Coal Co. and its change of name, to Crown Coal & Tow Co. and for the purpose of doing whatever might be necessary to transfer the title of property belonging to Belleville & St. Louis R. R. Co. to the Belleville City Ry. Co.

Affiant further expects to prove by said Chipley, that with said Chipley he attended said meetings on the 25th day of March, 1893 that all deeds that were executed at said meeting and in consequence

thereof, had been prepared and were ready at said meeting which was held at the office of Charles W. Thomas at Belleville, Ill., that all resolutions there passed and all deeds there made, or made in consequence thereof had all been prepared beforehand by. Chas. W. Thomas and were executed without question and he and said Chipley had at that time implicit confidence in the ability and integrity of said Thomas, and that it was supposed by said Chipley and affiant that said deeds and resolutions were prepared in good faith
803 with the view to carry out the sole purpose of said meeting which was as aforesaid, and was well known to said Thomas and to all participants in said meeting.

Affiant further states that on that occasion and at that time there was no change made in the contract of January 24th, 1893 in evidence in this case, but that of substituting the name Belleville City Ry. Co. for the Belleville & St. Louis Ry. Co. which was a natural necessary result of the adoption of the charter of the Belleville City Ry. Co.

Affiant further states that he expects to prove by said Chipley, that he affiant did not at that time or at any other time agree to pay the debts of the Belleville and St. Louis Ry. Co. except as contemplated in the agreement of January 24th, 1899 that is to say that he agreed as in that contract as stated to pay with the proceeds of the bonds to be issued, the investment of said Thomas and Adams in the Belleville & St. Louis Ry. Co. after he, affiant, had been reimbursed for his own outlay, in constructing said R. R. and equipping the same.

Affiant further states that he expects to prove by said Chipley that a certain affidavit which he, the said Chipley, at a later date than March 1893 made and gave into the possession of defendant in this case was made at the dictation of said defendant on the representation of said defendant to said Chipley that what was in said affidavit aforesaid did not militate against the true statements herein above set forth as the testimony of said Chipley; that said affidavit was made at a time when there was a misunderstanding and a controversy existing between your affiant and said Chipley and that he expects to prove by said Chipley that said affidavit was made at the request and solicitation of said defendant, E. L. Thomas and that any statement therein or in any paper which may be in the possession of said E. L. Thomas or produced by him at any time during the pendency of this cause which is to the effect or may be in any manner construed to be to the effect that said affiant ever
804 promised to pay the debt of the Belleville & St. Louis Ry. Co. other than as stated and as contemplated in the said agreement of January 24th, 1893 is untrue and that the facts in the matter are as it is herein before stated by affiant he expects to prove them to be by said Chipley.

This affiant further states that in the conflict of evidence in this cause he will require the testimony of said Chipley in order to create a preponderence in his favor that is to say in the favor of the truth and he knows of no other witnesses and there can be no other witnesses by whom the same facts which he expects to prove by said

Chipley can be proved. Affiant further states that this affidavit is not made for delay, but that justice may be done.

SAM'L H. LEATHE.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, the undersigned, a Notary Public within and for the said City, do certify that the above affidavit was subscribed and sworn to before me this 11th day of February, A. D., 1899 in the said City of St. Louis. And I do further certify that under the laws of the State of Missouri, I have authority to administer oaths.

Witness my hand and official seal at the City of St. Louis Mo.

[NOTARIAL SEAL.] JOSEPH G. HOLLIDAY,
Notary Public, City of St. Louis, Mo.

My term expires October 20th, 1902.

Leathe *vs.* Thomas. Copy of Affidavit. Filed February 14, 1899. Thomas May Jr. Circuit Clerk, St. Clair County.

805 SAMUEL H. LEATHE, Plaintiff,
vs.
EDWARD L. THOMAS, Defendant.

Testimony in above entitled cause taken on behalf of plaintiff, by consent, in the presence of M. W. Weir, Esq., Referee, at the office of said plaintiff, in the City of St. Louis, Missouri, commencing at 10:30 A. M. on the 27th day of April, 1900.

G. A. Koerner, Esq., appearing for the plaintiff, and Edward L. Thomas, Esq., appearing in his own behalf.

SAMUEL H. LEATHE, being duly sworn, testified in his own behalf as follows:

Direct Examination.

By Mr. KOERNER:

Q. What is your name?

A. Samuel H. Leathe.

Q. You are the party who testified before in this case as having sold bonds, stocks, properties, etc., of the St. Louis, Belleville & Southern Railway Company and Crown Coal and Tow Company in November, 1895, for the sum of $500,000., you are that man?

A. Yes, sir.

Q. Now, I will ask you whether you have prepared an account of your expenditures made on behalf of parties interested in that sale, from the time that you took hold of the enterprise until the present time?

A. I have.

Q. You present this account as appears in the printed
806 record in the case of Samuel H. Leathe and Ellen Adams and Bart Adams, *vs.* Edward L. Thomas, John T. Taylor, Chas. W. Thomas and Herman Barnickol, the Sheriff of St. Clair County,

in the United States Circuit Court of Appeals for the 7th Circuit, where it was filed on the 12th day of June, 1899. That is presented, Mr. Leathe, as a correct statement of your account with the fund you received from that sale up to the time that that account was closed (handing paper to witness)?

A. It is so presented.

Paper last above referred to is marked by the Referee "Exhibit A."

Q. Now since that time have you made any further payments on this account?

A. I have.

Q. And have you had occasion to make any corrections as to that account?

A. Yes, sir, I have made some corrections.

Q. I will ask you, Mr. Leathe, whether this paper is presented as a subsequent account of disbursements on account of the Belleville City Railway Company (handing paper to witness)?

A. It is so presented.

Paper last above referred to is marked by the Referee "Exhibit Q."

Q. It shows, I believe, some small items that were omitted in the old account?

A. Yes, sir, they were overlooked.

Q. And then the new items since that time?

A. That is right.

Q. Here is a paper marked "Disbursements of Crown Coal & Tow Company"; do you present that as a correct account of your disbursements (paper handed witness)?

A. It is so presented.

Paper last above referred to is marked by the Referee "Exhibit R."

807 Q. Since the time of the original account rendered?

A. Yes, sir.

Q. Here is a paper which contains some receipts, a summary of all the receipts from the beginning, together with some additions and some erroneous charges made in the original account; that is so presented, is it, Mr. Leathe (handing paper to witness)?

A. It is so presented.

Paper last above referred to is marked by the Referee "Exhibit S."

Q. No, I have another paper here, a summary of disbursements made from that account—the entire account, please examine that? (handing paper to witness)

A. It is what it purports to be, a summary of disbursements.

Paper last above referred to is marked by the Referee "Exhibit T."

Cross-examination.

By Mr. THOMAS:

Q. Mr. Leathe, in 1893, on the 25th of March, as I understand you, these Companies were really formed, that is the organization

took place and the arrangement was made in regard to matters that you afterwards changed, were they not?

A. Such arrangements were made, yes, sir.

Q. Now, was it not agreed at that time that the bonds of the Railroad Company were to be applied to the property that was to be acquired by the Crown Coal and Tow Company in payment of that property; was not that the original arrangement at that time?

A. They made some arrangement which we changed, I cannot recollect exactly the status.

Q. That arrangement was changed afterwards at a meeting of the Crown Coal & Tow Company, of the stockholders and Directors, on the 1st and 10th of March, 1894, was it not?

808 A. I would not undertake to say.

Q. At that time, Mr. Leathe, you introduced a resolution, did you not, which provided that the payment of the indebtedness of the Crown Coal and Tow Company was to be made to the different parties who had paid in money and property for the bonds of that Company and which were to be taken by those parties at par.

Objected to by plaintiff's counsel on the ground that — is a matter that will appear of record.

Q. What I want to get at is whether the items that you include in the account of the Crown Coal & Tow Company as presented here by you are the same items for which distribution of those bonds were had up to the date of the disbursements of the bonds; is that so?

A. I cannot say that, I don't think there was any technical agreement as to that point.

Q. Did you not present at that meeting an account of the moneys that you had expended up to that time?

A. I presented statements at different times.

Q. Did you at this meeting present a statement?

A. I could not say that.

Q. Was there an order at that meeting to pay you in satisfaction of what you had then paid in, $118,500. for bonds?

A. There were a good many resolutions.

Q. Was not that a fact?

A. I cannot tell you.

Q. In the sale you made you sold all of the $200,000. worth of bonds of the Crown Coal & Tow Company, is that true?

A. I sold all the bonds, yes, sir.

Q. And all the Railway bonds?

A. Yes, sir, all the railway bonds.

Q. You don't recollect how many of the bonds of the Crown Coal & Tow Company were in the treasury, in the resolution?

A. No, sir.

809 Q. You were the treasurer?

A. Yes, sir.

Q. And you took those bonds and sold them without any consultation with the Board of Directors, did you?

A. No, sir, I cannot say that, I had some consultation.

Q. Was there any consultation with the Board of Directors as a board?

A. We had no formal meeting, I don't know as there was.

Q. No consent and no call made by you as President of the Company?

A. Yes, sir.

Q. There was no call by you of the meeting in regard to the sale of the property by you, was there?

A. I think not.

Q. That applies in regard to the Railway bonds also?

A. I should say it would.

Q. So this sale was made of those bonds upon your own motion?

A. And upon consultation with the different directors of the two companies.

Q. Was there any consultation as to the price, with any of the directors?

A. Yes, sir.

Q. Any one except Mr. Chipley?

A. Yes, sir.

Q. With whom?

A. With Bart Adams.

Q. As to the price?

A. I think so.

Q. Did Bart Adams know the price you were to get at the time of the sale?

A. I think he did.

Q. You would not be sure of that?

A. No, sir.

Q. Did Mr. Merrills know of it?

A. I don't know whether he did or not.

Q. Did you have any consultation with Edward L. Thomas regarding the sale.

810 A. Not direct.

Q. With any other persons?

A. There were other persons that had consultations with you and reported to me.

Q. Who were those persons?

A. L. M. Chipley was one.

Q. Who else?

A. I think Mr. Gary or some of his associates.

Q. You are only testifying to this from information from those parties?

A. Yes, sir.

Q. You were not present at any consultation that either one of them had with Edward L. Thomas?

A. No, sir, I would say this sale was made on condition that your consent and approval had to be obtained by these parties.

Q. That does not appear anywhere in the papers, in the contract, does it?

A. That was part of the verbal agreement and a condition.

Q. Nothing in writing, no written contract with those parties?

A. It appears very often in a verbal way.

Q. I do not care to examine you on the coal account especially, but I want to ask you in the first place, it appears there in your railway account, an item "To Third National Bank of St. Louis, per agreement, $750.00"?

A. Yes, sir.

Q. For that you took the note of Edward L. Thomas, did you?

A. I won't undertake to say whether I did or not, for that amount.

Q. Did you take a note for that amount from Edward L. Thomas?

A. It is possible I did.

Q. Did you bring suit on that note?

A. I brought suit on some note, but I don't know whether that is the one or not.

Q. Did you not on this, and is not that the one of the judgments you are now attempting to recover against Edward L. Thomas?

811 A. I wont undertake to say.

Q. There is another item here of Mr. Henry T. Kent; you paid him a certain judgment that he recovered against you, and you charged it against the Company?

A. Yes, sir.

Q. Have you sued me on that claim and brought suit on this judgment here in this case?

A. I think I have.

Q. What if that be the fact?

A. It would be an error.

Q. And the same with the $750.00 it would be an error also if that were a fact, would it?

A. Yes, sir, it would be an error if it were an improper proceeding.

Q. Would that be proper to charge it against the Company and then proceed to collect it of Edward L. Thomas also?

A. It would not be proper for me to collect it from two different sources, of course.

Q. You have given credit for it in this account have you, and that reduces it down, the amount which you claim is still coming, by that amount, does it?

Objected to by plaintiff's counsel as argumentative.

Q. The point I want to get at is this: since Nov. 1895 you have had this money in your hands that you have received from the sale?

A. I have had some of it.

Q. You have charged to this Company all the costs of the litigation by which any of this money was attempted to be gotten from you to pay the claims of the Company, is that so?

A. Yes, sir.

Q. You have charged also all attorneys' fees for all the litigation for that time in those cases?

A. Yes, sir, some, not all.

Q. You have charged also all of the attorneys' fees and expenses

of all of the litigation prior to November 1895—that you
812 had individually arising out of these matters; is that so?

A. Yes, sir, I think it is; not arising out of all these matters, no, but directly pertaining to them.

Q. That is to say a suit you brought yourself?

A. That I brought myself against Edward L. Thomas.

Q. You charged to the Company?

A. No, sir, I did not.

Q. Have you not charged to the Company the entire amount of the recovery that Mr. Koerner had against you in the arbitration case?

A. Yes, sir.

Q. Have you not charged against the Company the entire amount of the recovery had by Mr. Holmes?

A. Yes, sir.

Q. Don't you know, Mr. Leathe, that the greater part of those charges were first in cases that were brought by you against Edward L. Thomas and others and arising out of old litigation — cases brought by Edward L. Thomas against you?

A. Arising out of the litigation that you created.

Q. The fact is that you have brought these charges in, and is not the fact also that they are the greater part of the legal expenses charged to these companies?

A. The legal expenses incurred for and in defense of the affairs of the Company.

Q. Now, Mr. Leathe, the first litigation for which you have charged here, was an action, bill for injunction brought by you individually against myself, Mr. Waddock, Mr. Taylor and Mr. Adams?

A. All the suits I have brought have been in the interest of the Crown Coal & Tow Company and the Belleville & St. Louis Railway Company.

Q. Did you bring an individual suit for injunction?

A. I did not consider it an individual suit.

Q. Did you bring it in your individual name?

813 A. I made all those checks in my individual name.

Q. Did you do that?

A. Yes, sir.

Q. Now, Mr. Leathe, you have persistently, since the receipt of this money refused to make any settlement of the affairs of the Company or to settle any of the claims against it without litigation, have you not?

A. No, sir, I have not.

Q. What cases have you settled without litigation?

A. You say I have refused, I say I have not.

Q. What cases have you settled without litigation?

A. A great many.

Q. What cases?

A. I cannot state them now, the account will show.

Q. Will you mention one case?

A. My account will show a great many bills that have been paid.

Q. I will ask you if you did not even litigate to the Supreme Court of Missouri, with your attorneys on your fees?

A. Yes, sir.

Q. After agreeing to arbitration?

A. Yes, sir.

Q. In the case of the Adams' against you, you litigated all those cases?

A. I have litigated a great many cases.

Q. All of those cases arose out of the fact that you had this money in your hands, of that litigation, the cost and expenses of it you have put in your account here?

A. All the litigation that I have been compelled to carry on has been in the interest of the Crown Coal & Tow Company and the Railway Company.

Q. One of the first claims aga-nst the Company was the claim of Wm. H. Snyder, derived from the sale of the property of Jane E. Snyder to the Company, on which there was a mortgage of $7500.00—you litigated that mortgage, did you not?

814 A. There was a litigation on that mortgage.

Q. You refused to pay it?

A. Because the title was not acceptable.

Q. You refused to pay it and you afterwards did pay it?

A. I refused to pay it until the title was perfected; I paid it when the parties to whom I sold the property accepted it.

Q. Did you charge to the Company the expense of that litigation?

A. I did, whatever I paid, I did not pay all the expenses.

Q. Did you pay interest on that from 1895 until it was foreclosed.

A. I paid all the interest that I charged.

Q. Did you pay interest on it?

A. I paid interest up to the time of settlement; all the interest I paid I charged.

Q. Did you consider it fair to charge this Company interest on that claim?

A. I do; in making the sale I was compelled to guarantee the title of the property, and until they accepted it, the note that was given was such that I felt compelled to pay the interest on the note.

Q. You did pay the interest on the note?

A. Until it was finally settled, until the maturity of the note.

Q. Until the foreclosure?

A. No, sir, not until the foreclosure.

Q. Did you charge that interest from November 1895, up to the time—during this time—to the Company?

A. The interest that I had to pay I charged.

Q. Did you think that was a proper charge?

A. I thought so and think so still.

Q. That is the nature of a great many of these charges and interest and account?

A. It is not.

Q. Now, Mr. Leathe, is it possible that you should make charge

against this Company of 33 hundred and odd dollars; I believe, how-ver, you have corrected the Churchill matter?

815 A. Yes, sir, that was corrected, that was an oversight.

Q. In your account of the Crown Coal & Tow Company you have charged up in that account all the claims that have been brought against the Crown Coal & Tow Company of Adams, Taylor and Edward L. Thomas arising out of the transactions of the old Crown Coal Company; is that right?

A. I think what I charged is right.

Q. If you have would they be correct charges?

A. They would have to be investigated.

Q. I see in the Crown Coal & Tow Company's account there was an advance by you of something like forty thousand odd dollars; the amount I do not care especially to get at, but the profit and loss during the time you were in control of the Company amounted to how much according to your statement here; is that a correct statement?

A. It is so intended.

Q. So you lost in the neighborhood of $40,000., according to this statement during the time from March 1893 to Nov. 1895?

A. We lost and sunk in improvements, etc.

Q. How much of that amount was improvements?

A. That I cannot tell you now.

Q. Does not your account show that?

A. It may be that an examination of the books will show that, I presume it will.

Q. The amount for improvements—that arose out of the amount of the improvements and amount of losses had in the business?

A. It all shows on the books, I presume.

Q. That makes up the profit and loss, the amount expended in improvements and amount lost in the business?

A. Yes, sir.

Q. Who controlled the business during that time?

A. I tried to control it, but I was defeated in a great many instances by Edward L. Thomas and others.

Q. In what instance were you ever defeated by me; what

816 interference was there by Edward L. Thomas in the conduct of the Crown Coal Co.'s business?

A. A good deal.

Q. Was there any interference in the amount of coal got out?

A. I will not say in the amount of coal.

Q. Or the conduct of the business in St. Louis?

A. Suits that you brought and instigated.

Q. Did it interfere with the business of the Company?

A. With my attention to the business it did.

Q. There were no suits until 1895?

A. Bogus suits were brought and dismissed.

Q. That you testify to, do you?

A. There were a great many bogus suits brought.

Q. You testify to that, do you?

A. I do.

Q. Which one was bogus?
A. The Court record will show.
Q. Which do you refer to as being bogus?
A. There were a good many suits brought and dismissed.
Q. That may be, but which one was bogus?
A. I don't care to go into that.
Q. You continued then to control the entire business in St. Louis from 1893 up to the time you sold out in 1895?
A. I controlled it under the direction of the Companies.
Q. Were there any meetings of the Board of Directors by which any control was given to you?
A. A great many meetings were held, some bogus meetings were held.
Q. How many meetings of the Coal Company were held during that time?
A. The record will show.
Q. Is it your recollection that at any one meeting anything was done regarding the transaction of Business in St. Louis?
A. In regard to the sale of Coal I don't know as anything.
817 Q. Or the collection of accounts?
A. No, sir.
Q. You have prepared also, an outstanding account of the Crown Coal Company which you say has not been collected; is that right, your account?
A. Supposedly so.
Q. Do you claim you could make any collection from L. M. Chipley?
A. I had a great many difficulties to contend with.
Q. Do you claim you could not have collected any indebtedness of his?
A. I collected all that I could.
Q. Do you say you could not have collected his?
A. I have not collected anything that is outstanding.
Q. Do you claim you could not have collected a claim from the City of St. Louis, and from a number of firms that owed you accounts?
A. A good many outstanding accounts, I have had a great deal of difficulty in trying to collect.
Q. The outstanding accounts amount to some $6,000. do they, according to your statements?
A. They amount to a good deal, I don't think as much as that.
Q. So taking everything now that you have paid out up to this date, including interest, including all the amounts of litigation, including the large sums of money that Mr. Koerner and Mr. Holmes recovered from you, you have on hand out of the $500,000. about $16,000., is that right?
A. Those papers are supposed to show right.
Q. Did you have an agreement with Mr. Koerner as to the amount of money that he was to receive for his services from the Railway Company at the time of his employment by you?

A. That has all been gone over before; we had a preliminary agreement.

Q. I asked you if you had such an agreement?

A. I had a verbal agreement.

818 Q. What was it?

A. I don't recollect now.

Q. What was the amount per annum?

A. I don't recollect.

Q. Was it about $1200. or $1500. a year?

A. Probably so.

Q. Was it $1200. a year?

A. I would not undertake to say just what it was.

Q. Was it $100. a month?

A. I would not undertake to say.

Q. It extended for one year, you only agreed with him for a year, did you?

A. I don't remember now.

Q. You had this little railroad out there and you employed Mr. Koerner without consulting the Board of Directors and without having authority from the Board of Directors?

A. I employed him in the interest of the Companies I represented.

Q. I am not asking you that, I asked you if you employed him without any authority from the Board of Directors?

A. I won't say what authority I had. There was no special resolution passed by the board of directors.

Q. You agreed as I understand you to arbitrate with Mr. Koerner and Mr. Holmes the amount of money they claimed from you coming some time in the latter part of 1895, and after you had received the $500,000.?

A. Yes, sir.

Q. The latter part of 1895, after receiving this money, you agreed to arbitration?

A. Yes, sir.

Q. You agreed in the arbitration to arbitrate all the amounts that were coming to them from the Crown Coal Company for services performed, from the Railway Company for services performed and from you individually for services performed?

A. Yes, sir.

Q. Was that arbitration—agreement—submitted to any of

819 the parties interested in the fund that you had received?

A. I won't answer that this moment, I cannot say whether it was or not, certainly.

Q. Was it ever submitted by Edward L. Thomas?

A. I did not consider you very much interested.

Q. You thought I had no interest in it?

A. You had sold out your interest I thought.

Q. You thought I had no interest in it?

A. I thought you had sold your interest.

Q. You gave no notice to Mr. Taylor, either, did you?

A. I won't say that I did.

Q. Nor did you invite or request the concurrence of Bart S. Adams, or the Adams estate?

A. Mr. Holmes controlled that.

Q. Mr. Holmes was doing that individually, and you did not give any notice to him or ask any concurrence of the estate outside of Mr. Holmes?

A. I think I consulted Mr. Adams about it.

Q. You have persistently stated all the time, have you not, since the summer of 1893, that Edward L. Thomas had no interest in this thing at all?

A. No, sir, I have not persistently stated anything of the kind.

Q. Did you say in 1893, in August or September, to Mr. Robert D. Holder and Mr. Alpheus Boling, in St. Louis, that Edward L. Thomas had no interest in it?

A. No, sir, I never said anything of the kind; anybody that says so tells what is not true; on the contrary I have always acknowledged that you had an interest in the Company, how could you hold a directorship in the Company otherwise?

Q. I will ask you if in August, 1893, just prior to your bringing the first suit you brought if you did not say in your office in St. Louis, in this Building, to Mr. Bart S. Adams and Mr. John T. Taylor that you intended to litigate the matter individually,
820 that Edward L. Thomas had no money to litigate with, and you had, and intended to litigate?

A. No, sir, I did not.

Q. Did you say to Edward L. Thomas when he asked you to stop the litigation before Judge Wilderman, at the time of the hearing of the first injunction, that you would continue the litigation?

A. No, sir.

Q. Did you say to Mr. Taylor in the presence of Mr. Owen, in this office and in this building, in the latter part of 1895 and just prior to the time of the bringing of the suit of John T. Taylor against you in St. Louis, that if he would stick to you and help you beat Thomas and Taylor out of their money he would get more?

A. No, sir, I did not.

Q. You never did?

A. No, sir, I never did.

Q. In 1893, March 29th you gave a note, did you not, to Bart S. Adams and Ellen Adams for the sum of $11,000.00 payable in railway bonds; do you remember that?

A. I would have to refer to my books to see about that.

Q. If you gave a note payable in Railway bonds how did it come that you made it payable in railway bonds?

A. I don't think I made such a note.

Q. If you made such a note, If you did, how did it come to be so; how could you make it payable in railway bonds? For what reason did you make it payable in railway bonds?

Objected to by plaintiff's counsel as not being cross-examination.

WITNESS: I don't care about going into a hypothetical case.

Q. You filed a bill, Mr. Leathe, against Edward L. Thomas and

others in the U. S. Court about a year ago, of which this was a record, your account; you swore to that bill, did you?

A. The record will show.

Q. Were the allegations of that bill true?

821 A. I don't know what the bill was, but whatever the bill was it was supposed to be true; anything I made oath to was supposed to be true.

Q. You alleged it to be true?

A. Anything that was sworn to was supposed to be true.

Q. Supposedly only; was it as true as the statements that you make here to-day under oath?

A. I am not making a comparative statement.

Q. Did you in that case swear to the truth?

A. Intentionally, yes, sir; if there is anything that changes, anything that controverts it, of course I am not aware of it. We are all liable to be mistaken, I suppose.

Q. You would not be liable to be mistaken about a sworn statement of facts, would you?

A. There is nothing that convinces me that I was mistaken.

Q. So you swore to that as a matter that might be untrue as well as true?

A. Supposedly true if I swore to it at all.

Q. Only suppos*ab*ly?

A. That I believed to be true to the best of my knowledge and belief.

Q. Your affidavit is that the statements of facts is true?

A. That was done to the best of my knowledge and belief just as I am doing now.

Q. You would not have the referee understand that you were not swearing to the truth now?

A. No, sir.

Q. You would not like for the referee to understand that you did not swear to the truth in the bill there?

A. I would not have the referee to understand that I consider myself perfect—not liable to make mistakes.

Q. I can see how a man can make a mistake in his account, but the statements of facts in that bill, were they true outside of the statement of account?

A. So intended to be true, and so far as I know they were true.

822 Q. You paid to the Adams Estate I see, $10,000?

A. Yes, sir.

Q. Did you receive any bonds for that?

A. I received bonds.

A. What bonds?

A. Some bonds that I had turned over to them, I don't remember what they were, I don't know whether they were Coal Company bonds or Railway bonds.

Q. I see you have an account here with the Bagnell people for ties?

A. Yes, sir.

Q. You paid for those in bonds, did you?
A. Yes, sir.
Q. Railway bonds?
A. Yes, sir.
Q. You entered into a contract with the 1st National Bank of Belleville to pay them in Railway bonds, to deposit with them Railway bonds?
A. That is your story?
Q. You did?
A. There was an agreement made, but I don't remember what it was.
Q. You agreed to deposit with them Railway bonds, did you not, Mr. Leathe?
A. There was some kind of an agreement but I don't remember now what it was.
Q. This paper is in your handwriting also, is it, you made that copy from the original did you (handing paper to witness)?
A. I don't know what I made it from.
Q. You marked in "copy" there, did you?
A. It is in my handwriting.
Q. You marked it "copy" did you?
A. I think it is in my handwriting.
Q. Look at the word "copy" up there?
A. That is my writing.
823 Q. This is a copy according to your statement, is it?
A. I don't know, but everything that I did then was changed by your subsequent action; we did nothing that remained for any length of time in the condition that was intended.
Q. This you copied, did you?
A. I won't say that I copied anything; that is in my handwriting, I think.

Paper last above referred to was marked "Exhibit U."

An adjournment was here taken till 2 P. M.

Testimony by SAMUEL H. LEATHE resumed at 2 P. M. as follows:

Redirect examination by Mr. KOERNER:

Q. I have a paper here headed "List of Contingent pending contested and unadjusted claims;" is that your list of unadjusted claims against that fund?
A. That is a list of these items brought forward from the preceding account just as they stand there without alteration, just brought over from that paper, and I present them as they are here.
Q. Except those that have come up since that time?
A. There may be some changes in them, some may be just and some may be unjust; some of those claims may have been withdrawn.
Q. This account, the list of unadjusted claims, is as presented before, is it?
A. The same, with the addition of one claim.

Q. You present that now as a list of all the claims still pending against this fund?

A. As far as I know now.

Paper last above referred to is marked "Exhibit V."

Q. In the list of contingent claims as it appears in the book which you have offered here there are a number of items which have since been paid, have they not?

A. Those that have not been settled are brought forward
824 in this paper that has been marked "Exhibit V."

Q. For instance in the original "Exhibit E" in the record of the U. S. Circuit Court of Appeals, present, there was a claim of Jane E. Snyder with interest, why is that not in this claim now?

A. That has been settled; the title to the property has been accepted and it has been paid.

Q. Those judgments of Mr. Holmes and Mr. Koerner are they still contingent?

A. They have been paid.

Q. By you?

A. Yes, sir.

Q. These claims of Needles *vs.* Leathe, $910. judgment, I find it in your claim presented to-day, what has become of that?

A. No settlement has been made of that, at least it has not been reported to me.

Q. The judgment has been reversed?

A. You may know that, I have no information as to that.

Q. You knew before that that the judgment had been reversed?

A. Whether it is still pending or whether it is withdrawn, I don't know.

Q. You did know that the judgment of $910. had been reversed?

A. Yes, sir, but whether it is still a contingent claim or not I don't know, but I presume it is a contingent claim.

Q. Adams against Leathe and the American Surety Company, a suit for $1,000. damages?

A. I don't know as I know about that.

Q. The decree of Thomas against the Crown Coal and Tow Company, which appears in your former list of contingent claims of $6309.89 that has been settled, has it?

A. That has been paid and settled.

Q. By you?

825 A. Yes, sir.

Q. Judgment recovered by Adams and Taylor for $3253.70 as it was in the original report?

A. That has been paid.

Q. This case in the Circuit Court of Appeals of St. Louis, St. Louis Dredging Company against the Crown Coal and Tow Company recorded by you as a claim for $7,000., in a former account, is not found in this account, what has become of that?

A. That suit was defeated.

Q. Mr. Chipley's claim for commission of $5,000. which is eliminated, what has become of that claim, was it pressed?

A. No, sir, it has not been pressed.

Q. What has become of Mr. Chipley?
A. He is in his grave.
Q. You don't expect any further litigation over that?
A. No, sir, I do not.
Q. Now, then, Mr. Leathe, there is amongst these claims a claim by Samuel H. Leathe, that is yourself, for time and services from January 4th, 1893, the time of presenting that report; what is that claim founded on; did you devote any time and services to this business?
A. I devoted most of my time from January, 1893, to November, 1895, to the work of these Companies.
Q. I will ask you whether this contract of January 24th, 1893, is the basis, foundation of this fund and its care in this business?
A. It was.
Q. What were you acting under all this time?
A. Under the January 24th, 1893, contract; I was not acting under any other.
Q. Now, what was generally, of course we cannot go into close details what generaly happened under this January 24th, 1893, contract; the companies were formed, were they which you had to take care of under that agreement?
826 & 827
A. The Belleville City Ry. was organized and changed to the St. Louis Belleville & Southern Ry. Co., and the Crown Coal and Tow Company was organized and business carried on, tugs and barges on the river were purchased and put to work and coal mines operated and new shafts opened, coal sales made, contracts, etc.
Q. Was there a railroad built and equipped.
A. Yes, sir, rights of way and terminal facilities obtained by purchase or condemnation, works of that kind.
Q. These properties were developed until they sold for $500,000.?
A. That is correct.
Q. I believe there was more than $500,000. realized from the sale?
A. Yes, sir, for the interests of the T-omases and others.
Q. Mr. Chipley got something?
A. Yes, sir, I think so.
Q. Do you know how much?
A. No, sir.
Q. About?
A. I don't know about, I have no idea.
Q. Now, to accomplish this, to build and equip and run the railroad and attend to this coal company's business, and do all this business, who did that?
A. I thought I did it.
Q. How much of your time did you devote to that?
A. I devoted a good many hours every day, and longer hours than I wanted to, in fact more than I would have been willing to have devoted to my private business.
Q. Did you receive any compensation for that as an official of these corporations?
A. Not a cent.
Q. I will ask you whether you considered the corporations as inci-

dent to the contract or whether they were the main thing in the matter?

A. I think they were necessary to the carrying out of the contract.

828 Q. I will ask you whether you faithfully endeavored to further the interest of this concern as placed in your hands by the contract of January 24th, 1893, all this time?

A. To the best of my ability under the circumstances I devoted my best efforts to the success of the enterprise entrusted to my care from beginning to end, and I have never received a cent either directly or indirectly as compensation.

Q. You have now presented your account showing how you carried on this trust?

A. Yes, sir, I have.

Q. What in your judgment is the reasonable value of your services in relation to that matter?

A. I know I would not go through it again for $100,000.; I put in a claim for $20,000, which I thought was a very moderate one and one that I thought exception would not be taken to.

Q. That includes everything you have done up to this date, does it?

A. Yes, sir.

Q. Did you have any experience as a man of business?

A. I had had no previous experience in building railroads or in operating coal mines, but in looking after financial affairs I had had a great deal of experience of course.

Q. Covering a period of many years?

A. Yes, sir, a great many years; my father died before I was of age, and left me to manage a business, as an only son, and I had to take charge of all his business affairs.

Q. What was the condition of the enterprise when you took charge of it?

A. I considered it in rather a dilapidated condition; Mr. Thomas said that he had gone as far as he could go with it, and then I took hold of it where he had left off; I will say if Mr. Thomas had co-operated with me as I supposed he would do the labor would not have been so severe as it was and the result would have been much better, I think.

829 Q. What is your opinion of the sale of these properties when you did sell them, as to whether it was a good or bad sale?

A. My opinion was that it was best to sell the properties; affairs were in such condition, fighting and lawing all the time, and I was disposed to take advantage of that opportunity to sell the properties; if we had all been working together harmoniously I think we could have done a great deal better, possibly, but under the circumstances I thought it was a good sale at the time, but I think we could have developed it into a larger and more successful thing if we had all worked together, but Mr. Thomas was anxious to get everything out of it and was hampering the thing with his lawsuits &c. which I thought was a foolish thing to do.

Q. Was the litigation which you went through with that was

carried on in your name in the interest and protection of the fund placed in your charge?

A. Decidedly so.

Q. And in the interests of the parties to that agreement?

A. Yes, sir.

Q. Mr. Thomas asked you this question: As you have shown in your reports you have received $10,000. in the fall of 1895, or when you paid $10,000. to the Adamses whether that was for some bonds?

A. It was not for bonds.

Q. What was it for?

A. On account of their interest in both Companies.

Q. Have you got a copy of the receipt?

A. Yes, sir. (Witness produces copy of receipt)

Q. This is a receipt given you at that time?

A. That is a copy of the receipt, I have the original.

Q. I will read that:

"Received St. Louis, Nov. 8th, 1895, of Samuel H. Leathe, $10,000. as follows: Cash $6974.00, Note of Bart S. Adams
830 $2508.00 and note of Bart S. Adams for $518.00, total $10,000.00. The said $10,000.00 being received as part payment of the interest of Ellen Adams and Bart S. Adams in the sale of the St. Louis, Belleville & Southern Railroad and the Crown Coal & Tow Company.

(Signed) J. M. HOLMES,
Attorney for Ellen Adams and Bart S. Adams."

That correctly expresses the transaction, does it?

A. Yes, sir.

Re-cross-examination by Mr. THOMAS:

Q. You received from them at that time $10,000.00 of the bonds of the Crown Coal & Tow Company, did you?

A. I had prior to that time, they had some bonds.

Q. Did you receive them on giving that receipt, on paying that money and giving that receipt?

A. I don't know whether I got them at that time or not.

Q. Were they delivered to you at that time—at that very time?

A. I think they had turned the bonds over to me prior to that time.

Q. Had they turned over to you $5000.—collateral—and gave you another $5000. when you gave that?

A. No, sir.

Q. You maintain that the contract of January 24th, 1893, governed you in all these matters?

A. That is the only contract under which I worked.

Q. You maintain that now?

A. I have always maintained it.

Q. How comes it that under that contract you claim $20,000. for services?

A. Because I did the work.

Q. How does it come that under that contract you took a note

from Edward L. Thomas for $750.00 which you paid to the Third National Bank if you were acting under that contract?

831 A. There was nothing in that contract that made me agree to hold the note, or any note.

Q. Nothing said about that $750,00 in that contract?

A. The contract will speak for itself.

Q. You have a contingent liability here of $11,000. to Ellen Adams and against Samuel H. Leathe for $11,000.?

A. No, sir, that is not so.

Q. If that is not so I cannot read (handing paper to witness) You are in the habit of testifying that way all the time.

A. The amount is changed.

Q. There is pending in the Circuit Court of the City of St. Louis a suit in favor of the T. J. Moss Tie Company in which the plaintiff lays damages at $4,000.; that is upon contract claimed by the Tie Company to have been made with you for ties for the railroad, is it?

A. They claim it.

Q. And you afterwards bought ties from some other person?

A. Yes, sir.

Q. From the Bagnell Tie Company?

A. I bought ties from different parties.

Q. And this is the suit which is caused by the claim of the plaintiff that you declined to carry out what they claimed to be the contract; is that right?

A. That is about the shape of it.

Q. "G. A. Koerner for legal services to date"; I see you have paid him $1500. since that time; does he claim this $2245. in addition to that

A. That is a claim made up to that date.

Q. I see by the disbursements that you have paid him $1500. since that time?

A. Yes, sir.

Q. Does he claim that $2245. in addition to that?

A. Yes, sir.

832 —. That is in this litigation that has been going on since that time?

A. Yes, sir.

Q. Bart S. Adams and John T Taylor against the Coal Company, in the St. Clair County Circuit Court; that is a bill in the account of the old Crown Coal Company matters—about $3500.: this arises out of the old Crown Co. matters, does it not?

A. I cannot without reviewing the matter say just what that is for.

Q. The Ellen Adams and Bart S. Adams claim for balance due contribution on barges, &c. that is the balance due on the $11,000. you contracted for?

A. Yes, sir.

Q. I see in these items and all the way through a number of items paid Boisselier, wages for having made up the account for you as bookkeeper?

A. Yes, sir, as an expert accountant.

Q. There are items here to a man by the name of R. M. Nicholls —several items; Mr. Nicholls was your attorney, was he not?

A. Yes, sir.

Q. It was in the case against Mr. Koerner and Mr. Holmes, was it not?

A. Yes, sir.

Q. In which you sought to show that Mr. Koerner and Mr. Holmes had tampered with the arbitrators; is that the case?

A. No, sir, that was not the foundation of the suit.

Q. But when you got into the Circuit Court that was the foundation and you moved to set aside the arbitration?

A. Yes, sir because I though- the award was unjust.

Q. Was there any other ground?

A. No other material ground.

Q. Did you have witness or detectives and others to show that Mr. Koerner and Mr. Holmes had tampered with the arbitrators?

A. That did not cut any figure.

Q. All of these printed matters, in fact all of these new
833 items that you have here arise wholly out of the litigation that has been going on since Nov. 1895, since you received this money?

A. I cannot tell you exactly about that, but the records will show; some are old and some are new.

Q. Here is one marked March, 1895, to Mr. W. H. Hinrichsen, change of name St. Louis to Belleville & St. Louis R. R. Co. $3.— that did not arise out of it; then there are other individual memoranda of the Company, among which you have Henry Orpen, Stenographer, that was taking evidence in this case?

A. I cannot tell you what case all of these items go on.

Q. It was in a law case which you had in litigation in which you have taken evidence outside of the litigation that has been pending against you, that is against these companies which you were to defend arising out of the claims of the parties interested were making against you for the money, that is all the litigations you have had except the Moss Tie Company case?

A. I cannot tell you all, for it has been a continuous succession of law suits.

Q. Have you had any litigation outside of the litigation arising out of the settlement of these matters?

A. Yes, sir.

Q. What litigation is included in this?

A. I will have to go over the records to show it.

Q. Trying to get the claims settled that they held against you?

A. Concerning all sorts of claims.

Q. Any litigation concerning these two companies outside of the cases that the parties interested had brought against you except the Moss Tie Co. case?

A. I don't know why you make an exception of that.

Q. That is the case in which Mr. Moss was not connected with the enterprise itself?

A. Only as a claimant.

834 Q. There was a payment of the judgment of Gundlach $245.; don't you know that arose out of the fact that you refused to surrender balance?

A. No, sir, I don't know it.

Q. "Edgar R. Rombauer" that was for taking evidence in that case?

A. Probably.

Q. "Mr. Orpen, Notary" and then the Sheriff Barnickol, Circuit Court, Thomas May, $35.98, that was the case that was decided in the Supreme Court, of Bart Adams and Taylor *vs.* the Crown Coal & Tow Company?

A. Probably.

Q. Judgment of Bart S. Adams *et al. vs.* Samuel H. Leathe $533.14; was not that the judgment upon the claim of the estate of W. A. Adams against the old Crown Coal Company?

A. I don't think so, I had no claims of W. A. Adams that I know of.

Q. You have here "E. N. Halloway, Clerk of U. S. Circuit Court of Appeals, Chicago;" you paid to the Appellate Court $225.00, and to the Court at Springfield, U. S. Circuit Court $70.75; was not that paid on the suit that you brought against me and you took an appeal to the Appellate Court there?

A. Probably, and you ought to pay it.

Q. So that all this account is made up of the costs and expenses of the litigation you had?

A. If equitably adjusted they should be charged to you, as 9/10 of the litigation has been instigated by you.

Q. What arrangement did you have with Maj. Stephens as to his salary when you were authorized by the Company to employ him?

A. I had no written contract with him.

Q. What salary were you paying him?

A. I don't remember, but the account shows.

Q. The account shows payment by you of a salary monthly all the time?

A. Yes, sir.

Q. You have an item charged in the account of Samuel Leathe of $733.00, what was that for?

835 A. For services.

Q. In what doing?

A. Paymaster, and in various ways.

Q. Was he receiving a salary for that work from the Crown Coal & Tow Co.?

A. He was receiving a certain salary from them, also, but not for that work.

Q. He was a Director of the Company at one time, was he?

A. Part of the time.

Q. Was he all the time?

A. No, sir.

Q. From both of the companies, from the Crown Coal & Tow Company, and from the Railway Company?

A. At one time he was.

Q. What time?
A. I cannot tell you, but the record will show.
Q. During that time he was also Secretary of the Company?
A. Yes, sir.
Q. Mr. Chipley was President of the Crown Coal & Tow Company at one time, was he?
A. Yes, sir.
Q. He sued the Company for a salary, did he?
A. Yes, sir.
Q. Did you testify in that case that it was agreed among all the parties to it that they were to receive no salary?
A. No fixed salary.
Q. Did you testify that it was agreed in that case that they were to receive no salary?
A. No, sir.
Q. You did not?
A. No, sir, I did not; no fixed salary.
Q. Did you testify it was agreed no compensation would be paid for work to either one of the parties interested?
836 A. I think not, sir, that no compensation was to be paid, because I was paying it right along to Taylor and Adams.
Q. You were paying them a salary knowing they were indebted to the Company?
A. Paying everybody that rendered services.
Q. You were paying Mr. Chipley a salary when he was indebted to the Company in a large sum of money?
A. We had to get along with Edward L. Thomas and Mr. Chipley the best way we could.
Q. I was not here?
A. If you were not here in person you were represented.
Q. You don't remember of my having been in the office, do you, or taking any part after August, 1893, do you, more than once?
A. I don't remember any time when you were not making a disturbance.
Q. So you say you don't know of any time in these transactions but I was making a disturbance, either myself here or through somebody?
A. I don't know of any time.
Q. Did you ever get me to assist you in any work?
A. I did until I found you out.
Q. When was that that you found me out?
A. In the early beginning.
Q. When?
A. A good while ago.
Q. As early as the First of July, 1893?
A. I will not go into dates.
Q. Was it prior to the time of the meeting of August, 1893?
A. I found you out at the meetings—very early meetings.
Q. And do you remember the time you got Mr. Chipley discharged from the Board?
A. I don't remember the date.

Q. Did you get Mr. Taylor to procure anybody in getting rid of Mr. Chipley?

A. I cannot say that I did.

837 Q. Did you procure Mr. Taylor to get a resolution drawn by anybody?

A. No, sir, Mr. Taylor is not the man to draw resolutions, Mr. Thomas draws resolutions for Mr. Taylor.

Q. I asked you if you got Mr. Taylor to procure anybody to draw the resolution?

A. No, sir, if I got Mr. Taylor I know he would get Mr. Thomas to do it.

Q. So under this contract you charged for services?

A. For the labor that I performed.

Q. And at one time you claimed that Mr. Chipley was entitled to services too?

A. He was having a salary—a weekly or monthly payment for services; he was not entitled to any fixed salary.

Q. Did you learn from Mr. Chipley what he got for his stock?

A. I never did.

Q. Did you learn from him what he got from the purchase for the sale of bonds?

A. No, sir.

Q. Did you ever ask him?

A. No, sir, when I say no I mean he has never given me any information.

Q. Did you ever insist that he should pay to the Company whatever he got for the sale of the bonds?

A. No, sir, I don't know that he got anything.

Q. You had full control of the Company and did all its business and managed all its affairs?

A. I don't think I managed all its affairs but all I could.

Q. You managed its business affairs over there, the buying and selling of coal and managing the railroads and sinking the mines?

A. Unfortunately I had to do it.

Q. You managed the whole thing; you knew that Mr. Chipley was a party to the contract, did you?

A. Yes, sir.

Q. Mr. Chipley put nothing in this railroad, did he?

838 A. Nothing but his name.

Q. The stock of the railroad was not divided according to amounts put in by anybody, was it, with reference to any amount put in?

A. I don't remember how Mr. Chipley got his stock, I think he got it through you.

Q. The stocks of this Company were not divided amongst persons according to the amounts, or with reference to any amounts they had contributed or wanted to contribute to the Company?

A. They were distributed according to the agreement.

Q. They were not distributed in accordance with any amounts that persons put in?

A. They had some reference to it but not entirely.

Q. They had some reference to it; did Mr. Chipley put in anything; and was it contemplated that he should put in anything?

A. You ought to know, you and Mr. Chipley were one, he was your man—he was in your employ,—your agent.

Q. Was he with you, in the contract with you?

A. He was a promoter with you.

Q. So whatever he did in the contract was done with me?

A. In the beginning of things he was your man.

Q. You say it came to a contract; in this contract was he a party with me or with you?

A. What contract?

Q. What you claim as the contract of January 24th, 1893?

A. He was acting with me; he was originally a promoter under your direction.

Q. I believe you have testified in your former evidence regarding this contract and all the circumstances connected with it; I only want you to reiterate here that what you said in your former evidence is true; is that so?

A. When you present the evidence I will tell you whether it is true or not.

839 Q. You can tell after presentation of your evidence whether it is true or not?

A. I don't know what you refer to.

Q. I refer to the evidence taken in this case?

A. All of my statements are true, intentionally, mistakes may occur.

Q. I will ask you now to state whether what you said then was true or not?

A. You have to specify more particularly.

Q. I would like to inquire whether anything you have said was true? I will ask you again that question, do you decline to answer that?

A. If you will present what you want to know I will tell you whether it is true or not; I don't know what you are talking about.

Q. Otherwise you cannot tell what you testified to before whether it is true or not?

A. I don't know what you refer to.

Q. Your evidence in this case taken before Mr. Rombauer, and Mr. Turner, the former Referee?

A. I want you to refer to it; anything that I assert is true; everything that has been written I would not undertake to say whether it is true or not until I see it.

Q. If you went over it afterwards and corrected it?

A. Many of those things I have not gone over or seen.

Q. Are you willing now to testify that the statement of facts you made in this bill from which this evidence is offered here is true?

Objected to by plaintiff's counsel as immaterial, as the witness says it is according to his best knowledge and belief.

Q. Since November 1895 in all the litigation that has taken place have you defended the cases?

A. I have defended a great many cases.

Q. Have you defended them all?
A. I have defended a great many cases.
Q. Did you defend the case of Edward C. Rice *vs.* the Belleville & Southern Railway Co.?
840 A. I tried to.
Q. You defended it?
A. Yes, sir.
Q. And you employed the attorneys, did you?
A. Yes, sir.
Q. You also defended the case of Bart S. Adams and John T. Taylor and myself *vs.* the Crown Coal & Tow Company?
A. I have defended a great many cases.
Q. You also defended the case of Edward L. Thomas against the Belleville & St. Louis R'y Co., did you not, in which you employed Mr. Koerner as attorney?
A. I have defended a good many of them.
Q. You received notice from the Company to defend that case, did you, if you saw fit?
A. I don't remember.
Q. At any rate you defended it?
A. I defended a great many?
Q. I am asking you about that case?
A. I presume I did.
Q. And in the cases of the Belleville Cy. Ry. Co. then, and the Belleville & St. Louis Railway Company against me enjoining me from proceeding in that suit?
A. I cannot go over the record.
Q. You defended that suit, did you?
A. I presume I may have done so.

Redirect examination.

By Mr. KOERNER:

Q. Is there anything else that you desire to state?
A. Mr. Thomas asked me this morning in regard to the sale of stocks and bonds of the Adams folks, and Taylor, as to whether I had any authority to sell them; I find I had; the sale was made subject to their approval at the time the sale was made, and they signed the papers themselves and knew all about it; Adams and
841 Taylor were present and they consented to the sale and participated in it.
Q. And the amount at which they were to be sold?
A. Yes, sir. The- very cheerfully acquiesced in the sale; they also had given me written permission to sell their stocks and bonds.

Signature waived by agreement of counsel.

841½ Offered Aug. 10, 1899

L. D. T.

Defendant objects to this statement being recorded because it is not sworn to as required by the order of Court of June 19, 1899.

DILL & WILDERMAN,
Att'ys for Def't.

EXHIBIT A.

Samuel H. Leathe's Disbursements on a/c of the Crown Coal & Tow Co.

Oct 22, 1898.

Date	Name etc.	Voucher No.	Bank Check No	Sundries	General Expense	Mining Lands	Loans C. C. & S. Co.	Bart. S Adams	Int. on Notes	Tug Boat
Jany 17 93	Tug Boat "Arie Parker" pd to Thos. & Harry Parker		1084							
Feby 27 93	Jos. Ehrstein, purchase money		cy			1000				
	Peter Schwinn do do 3112.50		cy			3375				6000
March 1 93	Mary H. & Peter Voellinger 637.50					3750				
2	Griffith & B. P. Bogy, W. Coal & S. Co. Stock		1103 5	22100						
6	Telegram to Griffith		cy		.40					
	Val Keck purchase money		132			1000				
	H. S. Thwing, copying				5					
8	Jac Voellinger purchase money					2500				
13	Alois Forst do		84			1187.50				
25	Recording 9 deeds		1109			7				
31	Cash for deposit		85				2000			
April 8 93	" " "		1114				1000			
May 10 93	" " "		1120				500			
31	Freight on lumber ½ of 120.94"		1144				67.82			
June 1 93	Tug Boat repairs by Fulton Iron Co.		1154				803.95			
3	do do J. D. Lawin		1158				558.20			
	Cash loaned for deposit		1162				500			
6	Tug Boat rep'rs. St. L. sectional Dock Co.		1163				1300			
	Tug pay roll		1170				163.47			
	G. A. Schlender oil		1171				172.61			
7	Cash loan for deposit		1172				500			
10	" " " "		1175				1500			
24	" " " "		1178				1000			
28	C. W. Harris Timber		1190				18.60			
30	Cash loan for deposit		B30				3000			
			1200					4556.15		
July 3 93	Boatman's Bank protested note of B. S. Adams et al						1000			
10	Cash loan for deposit		1208				1000			
Oct. 25 93	" " " "		1217				500			
28	" " " "		1282				500			
Nov. 3 93	" " " "		1283							
22	Howard Watson Limber see Ry. V 161		1286				1000			
27	Cash loan for deposit		1289		64.60		500			
Dec. 2 93	" " " "		1302							
16	Holmes to equalize salary		1309		62.50		1000			
Jany 27 94	Cash loan for deposit		1318				1000			
Feby 5 94	" " " "		1349							
20	Int. on Jos. Ehrstein note see V 28		1355					150		
		183	1364							

Ex Exhibit A.

Date	Name etc.	Voucher No.	Bank Check No	Sundries	General Expense	Mining Lands	Loans C. C. & S. Co.	Bart S. Adams	Int. on Notes	Tug Boat.
	Amt forwd.			22100	132.50	12869.50	19654.65	4556.15	150	6000
Febry. 20 94	E. L. Thomas drawing mortgage		1365		25					
28	Peter Schwinn Int. on note (see V 43)	20	1370						506.25	
	W. E. Ward do do (see V 31)	20a	1372						30	
	J. M. Dill (Elias Ward) Int. on note (V 27)	20b	1371						30	
	Ry & Bridge fares & lunches		cy		3.80					
March 1 94	Ry & Cab fare 1.70 & Notary		cy		2.20					
5	Sophia Phillips et al Int. 90 each	21a6,7	1375						270	
	Ellis S. Ward (See V 31)	21b	1393						30	
	Mary H. Voellinger Int. (see V 29)	21c	1379						466.87	
	Peter Voellinger Int. (see V. 32)	21d	1380						95.62	
6	Cash loan for deposit		1382							
8	Jac Voellinger Int. (see V. 30)	21f	1383				1000.00			
10	Taxes of 1893 for coal land & personal		1384 5						375	
13	Alois Forst Int on note (see V. 27c)	22a	1388		84.19					
14	Val Keck " " " (see V. 33)	22b	1387						178.12	
27	Cash loan for deposit		1405				500		150	
April 15 94	do do		1413				1500			
June 9 94	do do		1461				1500			
July 7 94	do do		1490							
10	do do		1491		500					
11	Jac Voellinger purchase money		1494	1			1000			
	Recording		cy				500			
26	Cash loan for deposit		1508				1000			
28	do do do		1509				500			
Sept. 26 94	do do do		1586				1000			
28			1591				1000			
Oct. 8 94			1621				1000			
26			1668				500			
Nov. 9 94			1697				500			
Dec. 94			1746							
11			1762	38.35			500			
	Costs in case C. C. & S. Co. vs. Chipley		1763							
17	Cash loan for deposit		1772	8.10						
Jany. 12 95	Thos May Jr. Transcript		1819	75						
Feby. 19 95	G. A. Koerner 150	25a	1866				1000			
March 1 95	Cash loan for deposit		1883						150	
2	Jos. Ehrenstein Int. on note (See V 28)	25b	1887						95.62	
	Peter Voellinger Int. (see V. 32)	25l	1889							
				22100	370.14	13319.50	34654.65	4556.15	2527.48	6000

Date	Name etc.	Voucher No.	Bank Check No	Sundries	General Expense	Mining Lands	Loans C. C. & S. Co.	Bart S. Adams	Int. on Notes	Tug Boat
	Amt. forwd.			22100	370.40	13319.50			466.87	
March 2 95	Mary H. Voellinger Int. (see V 29)	25E	1888						270	
6	Phillips, heirs. Int. see V. 44-5-6)	25H	1899, 7, 8						506.25	
	Peter Schwinn Int. see V. 43	25D	1896						60	
11	J. M. Dill (for Elis Ward) see V. 31	25c	1909						178.12	
13	Alois Forst Int. see V. 270	25f	1912						150	
27	Val Keck Int. see V. 33	25g	1938							
	P. M. Gundlach purchase money	26	1939			13642.33	1000			
April 2 95	Cash loan for deposit		1958				500			
19	" " " "		1977				500			
23			1983				1500			
25			1986				1000			
May 9 95			1998				500			
11			2001						30	
24	H. M. Needles Int. on note of Elis Ward	26B	2000				1500			
27	Cash loan for deposit		2026							
29	N. O. Nelson et al Lombard	26A	2029		160		1000			
29	N. O. Nelson et al Barnard		2041				500			
June 7 95	Cash Loan for deposit		2050				75			
12	" " " "		2059				25			
15			2079				1000			
29			cy							
July 6 95			2087			2750.16	1000			
10	Anthony Pfeffer		2123			1705.99	1000			
26	Cash Loan for deposit									
10	Alex Pfeffer		2273			592.15				
Oct. 3 095	Cash Loan for deposit	27	2341							
Dec. 2 95	Elis S. Ward note pd.	27	2341		125					
19	Notary 1.00 car fare 25		cy		125					
Jany 21 96	Expense (Alois Forst)		cy			3714.10				
	Alois Forst	27c		1200						
23	John Taylor on ⅓ of his int. in both Co's		2388						270	
March 6 96	Phillips heirs, Int. on 9 notes	27B	2429							
Feby. 14 96	Jos. Ehrstein note pd.	28	2406			3093				
28	Mary Voellinger note pd	29	2417			9337.50				
29	Jac Voellinger note pd	30	2421			6700				
Mar 4-6 96	Elis S. Ward paid to Needles	31	2426			1200			30	
7	Peter Schwinn Int. see V. 43	31A	2435						506.25	
9	Peter Voellinger note pd	32	2438							
23	Val Keck	33	2448			1912.50				
June 16 96	Letter Book		cy			3000				
					1					
				23300	375.24	60474.53	46754.65	4556.15	4904.97	6000

Exhibit A.

Date			Name etc.	Voucher No.	Bank Check No.	Sundries	General Expense	Mining Lands	Loan & C. C. & S. Co.	Bart S. Adams	Int. on Notes	Tug. Boat
			Amt forwd			23300	175.24	60474.63	46754.65	4558.15	3994.97	6000
June	30	96	Carting old books		cy		.75					
July	15	96	Weller & Weller (½) see B. Ry. V 927	34	2503		30.65					
	21		Telegram		cy		.50					
			1.00 .25 .25				1.50					
Dec.	16	96	Notary carfare Express		cy		7.50					
Aug.	5	96	W. S. Voris Detective work see B. Ry. V.	35	2525		10.80					
	10		G. K. Andrews see B Ry. V. 933	36	2527		69.65					
Sept.	12	96	R. W. Boisselier "Auditing"	37	2542		150					
	26		G. A. Koerner see B Ry. V. 936	38	2545		.50					
Oct.	7		Telegram & Express		cy		150					
	28		G. A. Koerner	38A	2558		50					
Dec.	21	96	Luebke & Muench (½) Adams case	39	2575		75					
Jany	23	97	G. A. Koerner	40	2590		100					
Febry	6		G. A. Koerner	41	2594		10			3442.32		
	26		Costs Appellate Court E. L. T. vs. C. C. S	42	2602							
Mar	1	97	Peter Schwinn note paid	43	2603			9381.25				
	6		Sophia Phillips " "	44	2608			1890				
			Juliete Mitchel " "	45	2609			1890				
			Mary F. Covington "	46	2610			1890				
June	23	97	Ellen Adams Judgment note	47	2677							
	26		Costs on same	48	2680		15.15					
Sept.	14	97	John T. Taylor bal. of salary	49	cy	215.40						
	16		Dismissal of Taylor case No. 183	50	2719		3.20					
Dec.	11	96	J. A. Kunce, witness Adams vs. C. Co.		cy		11					
	31		Expense in Adams suit at Belleville		cy		7.55					
Jany	8	98	Bart S. Adams, Judgment	50A	2778	1974.35						
	15		Wolmser do	51	2786		9.10					
	18		J. A. Kunce witness		cy		1					
Febry	7	98	F. A. Wislezenius Sims case ½ returned	52	2803		72.50					
	17		Court costs on Sims case	53	2807		26.50					
March	2	98	R. W. Boisselier Adams case	54	2812		2					
May	14		H. Orpen "Steno"	54½	2849		14.50					
Sept	8		E. R. Rombauer atty. St. D. Co. vs. C. C. & T. Co.	55	2892		50					
	24		Appellate Court costs in Taylor Adams & N	56	2897		20					
						25489.75	1239.59	75525.78	46754.65	7998.47	4994.97	6000

Recapitulation-

	25489.75
	1239.59
	75525.78
	46754.65
	7998.47
	4994.97
	6000
Total	168003.21

EXHIBIT B.

Disbursements of Sam. H. Leathe on 7/8 of the Belleville City Ry Co. (St L B & S Co.)

Oct 28, 1898

Date	Name etc.	Voucher	Check	Sundries	Rt of Way & Trml Prop.	Constr. & Other Exp.	Rent of Office	Equipm't	Paid on Old Bonds	Operat'g. Exps.
1893.										
Jan 29	Jane E. Snyder (see Deed	1	1089		500.00					
30	Car and Bridge fare	2	cy			2.16				
Feb 4	C. F. Stephens	3	1091			25. 00				
" 18	Jane E. Snyder-bal-see Deed	4	1096		2000.00					
" "	Recording Deeds .75--Notary 50	4a	cy			1.25				
" 21	C. F. Stephens	5	cy			2.10				
" 23	" "	"				150.00				
" 24	3d Nat'l Bk as per a'gm'nt 1-24-93	7	1100							
March 1	L. Granger "surveyor"	8	B1			16.20			750.00	
" 1	Car and bridge fare in Feb'y	9	cy			1.25				
" 2	Philippine Johnson as per ag'mt 1-24	10	1104	1500.00						
" 6	H. S. Thwing "Steno"	11	cy			5.00				
"	A. C. Hucke—fence wire	12	cy			2.10				
" 8	C. F. Stephens	13	1108			22.50				
" 17	Deed blank & bl'k books	14	cy			.50				
" 13 24	W. A. Reiss	15	B6-7 8			89.56				
" 29	Drawing and recording Deeds	16	cy			11.50				
30	Boling and Thomas	17	B10			750.00				
"	Car and bridge fare	18	cy			10.85				
Apl. 3	C. F. Stephens	19	1116			259.45				
"	A. S. Aloe & Co	20	1117			12.40				
" 4	N. McCracken see S. H. L. Deed	21	1118		1142.00					
"	H. L. McNulty see S. H. L. Deed	22	1119		900.00					
"	Ferd La Vaile—do	23	cy		157.00					
"	Fr La Perch—do	23a	cy		200.00					
"	Jos. Bossnon	23b	cy		100.00					
" 7	Map of St. Louis	24	cy			7.50				
" 12	Office furniture and stat'y	25	cy			26.15				
"	D. Vogt (Fencing lot 223)	26	B11			17.00				
" 14	Nicholas Meyer (see deed)	27	B12		125.00					
12	Recording deeds & agreements	28	cy		4.00					
" 13	F. Reichmann. (see deed)	29	1123		750.00					
	Mrs. Bauman—do	30	cy		250.00					
" 17	E. L. Thomas	31	B13			27.35				
" 18	Recording deeds	32	cy		2.25					
" 25	Dons Coal Co	33	1126		100.00					
" ---	E. L. Thomas	34	B-14			40.00				
May 26 93	F. Tieling R. of W. see S. H. L. Deed	35	----		1000.00					
	Recording Chris R of W 75 &		cy							
Apl 26 93	St. Clair Co Title of Office 10	36	B15		10.75					
" 29	Cossage & St Ly 8.50	37	cy			12.34				
	Car & bridge fare 5.75	38	cy							
May 2	Freight 18.77 &	39	1130			18.77				
	Feather Duster .55	40	B16							

Exhibit B.

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Date		Name etc.	Voucher	Check	Sundries	R/of Way & Constr. and Terml Prop.	Other Exp.	Gen'l of Office	Equipm't	Paym on old Bonds	Operat'g Exps.
1893											
		Brot forward			1500.00	7241.00	1531.78			750.00	
May	2	James Wainwright Exchanged for building land—See Deed	41	B18		200.00					
"	6	Jul Kohl (see S. H. L. deed)	42			1300.00					
				B19							
"	2 6	Peter Gass—Do	43	1142		1300.00					
"	—	Chas. Lorn Damage	44	1135		200.00					
	3	F. Tilling (see S. H L. deed)	45	B21		4.75					
	4	C. F. Stephens	46	1137			264.50				
		J. J. Devoux 40.50		1138			73.83				
	—	L. Farley 33.33	47	1139			2.25				
		Recording Deeds	48	cy			5.50				
			50	cy			5.00				
	10	Tarpaulins	51	1147			9.62				
	13	W. A. Reiss	52	1148			50.00				
	16	Ry. fr't	53	1149			1.50				
	18	J. M. Holmes—Atty	54	cy			86.62				
	19	Recording deeds—Sous Coal Co.	55	B22			.90				
	20	Wm Hees—Pay roll	56	cy			5.00				
	22	Telephone 50 Telegr. 40	57	cy			10.00				
	24	C. F. Stephen (see V. 67	58	B23		3000.00					
	27	N. C. Thwing	59	B25		850.00					
	29	Wm. Brandenburger, (See Condemnation papers)	60	1156							
	30	Maurice Andre (see S H L Deed)	61	B24		100.00					
	29	Sheriff in Brandenburger Case Ch 99.10 cy 1	62	1154			53.12				
	31	Fr't on Ties and Sand	63	cy			12.80				
	—	Railroad & bridge fare in May	64	1159			16.00				
June	1	Chas. Rippe	65	1160			65.00				
	2	Fr't on Ties	66	1161			225.00				
	3	Caspar Stolle	67	1165			120.00				
	—	C. F. Stephens (see V. 57	68	B27			304.06				
	—	Wm. C. Hees—P. R.	69			30.87					
	5	John D. Jones (see S. H. L. deed)	70	cy			2.50				
	—	Recording deeds	71	1169			14.50				
	6	Fr't on Culvert pipes	72	1173			21.00				
	—	A. S. Aloe & Co.	72a			1000.00					
	13	Ann Philips (see S. H. L. Deed)	73	1177			100.00				
	14	C. F. Stephens Sal & ticket See V. 97	74	1180			26.00				
	15	Dowling & McGunnigle	75	1183			1280.80				
	16	A. F. Shapleigh & Co	76	B28			18.58				
	17	R. Gooding	77	B29			11.25				
	17	Wm. C. Hees—P. R.		1184			160.69				
	—	Deverux & Farley	78	1186			85.00				
	21	Fr't on Ties	79	1187			135.32				
		Am'ts for'd			1500.00	18753.10	4698.12			750.00	

Exhibit B.

Date		Name etc.	Voucher		Check	Sundries	Rt of Way & Trml Prop.	Constr. & Other Exp.	Rent of Office	Equipm't	Paid on Old Bonds	Operat'g. Exps.
1893		Brot forward				1500.00	18753.10	4698.12			750.00	
June	2	W. H. Hill	80	1188				30.21				
"	22	Woodward and Tiernan	81	1189				21.25				
"	23	Express on Bonds	82	cy				1.75				
"	24	Wm C. Hees—P. R.—	83	1191				31.99				
	27	Wm C. Hees—P. R.—	84	1193				83.88				
	—	Laclede Firebrick Manuf. Co.	85	1194				207.05				
	29	Marg. Opp. & Bornman (See Deed	86				1050.00					
	—	Recording Deed—Bornman	87				.75					
	—	Recording Deed—Opp—	87a				.75					
	—	Nic Reeb	88	1198				120.00				
	—	Ry & bridge fare in June	89	cy				8.55				
July	1	Recording Deed	90	cy				1.75				
	—	Jas. Premium	91	cy				2.00				
	6	F. J. Moss	93	1211				333.48				
	—	Fox & Curran	94	1212				3.50				
				1214								
	8	Devereux & Farley	95	1215				85.00				
	10	Woodward & Tiernan	96	1216				23.50				
	11	C. F. Stephens—see V. 73	97	1219				169.15				
	13	F'rt	98	1222				82.60				
	15	Recording Deeds	99	cy			.75					
	—	Fr. Daab—Cement	100	1223				223.95				
	—	M. T. Stookey (see S. H. L. Deed)	101	1224			2000.00					
	17	Dowling & McGunigle	102	1225				2776.24				
	18	M & H Reis	103	1228				55.10				
	19	Caspar Stolle	104	1229				165.61				
	—	A. S. Aloe & Co.	105	1230				5.70				
	—	A. F. Sharpleigh	106	1231				3.38				
	28	Intl Bank Note Co.	107	1233				1000.00				
	—	R'y & Bridge fare in July	108	cy				4.75				
	—	Express	109	cy				.25				
Aug	1	C. F. Stephens	110	1234				90.00				
July	28	94G. A. Koerner (Witness fee Coll at Springfield	110a	cy				25.60				
								152.70				
Aug	3	93La Clede Fire Brick Co.	111	1236				2.45				
"	5	Woodward & Tiernan	112	1237								
				1239				85.00				
"	9	Devereux & Farley	113	1240								
	10	Postage	114	cy				1.08				
	15	Jane E. Snyder—Int	115	1241			187.50					
	19	G. A. Koerner	116	1246				100.00				
		Amt Forward				1500.00	21992.85	10595.39			750.00	

Date		Name etc.	Voucher	Check	Sundries	Power	Way	Other Exp.	Elec. Equip.	Cars	Rents	Exp. etc.
					1500.00	24902.80		16405.39				750.00
1903		Brot forward						1868.73				
Aug	23	Dowling & McGunnigle	117	1248				22.50				
	24	Higgins & Co.	120	1250				6.00				
	25	A & O A Hincke	121	1251				14.96				
	—	Ry & Bridge fare in Aug	122	cy								
				1238								
				1243								
				1252								
Sep.	2 4	C. F. Stephens	123	1254				260.00				
"	7	Woodward & Tiernan	124	cy				.35				
				1260								
"	14	Devereux & Farley	125	1261				85.00				
"	15	C. F. Stephens	126	1262				40.00				
	16	G. A. Koerner	127	1263				500.00				
	—	Recording Deed	128	cy		.75						
	—	W. A. Reiss	129	1264				20.00				
	19	Dowling & McGunnigle	130	1266				1456.00				
	—	C. F. Stephens	131	1267				40.00				
	19 26	Notary	132	cy				1.00				
	26	John Clarahan	133	1269				48.56				
	28	G. A. Koerner 1/50 Part of ck.	134	1276				25.00				
		Ry and Bridge fare in Sep.	135	cy				12.41				
Oct.	2	Newspapers	136	cy				.65				
	—	Security Bldg	137	1273					333.33			
	3	Christ Kuelle Kamp	138	1275				231.25				
	9	H. M. Needles	139	B31				34.00				
	13	C. F. Stephens	140	1276				129.63				
				1277								
	16	Devereux & Farley	141	1278				82.17				
	17	Dowling & McGunnigle	142	1280				1206.40				
	20	Recording Mortgage	143	B32		8.50						
	—	Printing	144	B33		27.00						
		Ry & Bridge fare in Oct.	145	cy				1.40				
Nov	1	C. F. Stephens	146	1284				60.23				
	—	R. Gooding	147	B34				17.00				
	4	T. L. Feketc (see S H L Deed	148	1285		100.00						
	—	Woodward & Tiernan	149	1288				20.00				
	6	Printing first mortgage	150	B36		27.00						
	9	Jos. Chartrand (see S H L Deed)	151	1289		100.00						
	—	Dave Chartrand	152	1290		10.00						
	11	C. F. Stephens	153	1291				106.51				
				1292				45.00				
	13	Devereux & Farley	154	1293				1.05				
	14	A. S. Aloe & Co	155	1294								
	15	Jos. Chartrand – Bal—(see S H L Deed)	156	1295		400.00						
	16	T. L. Feketc (see S H L Deed)	157	1296		639.50						
		Card forward			1500.00	23605.80		17031.39	333.33			750.00

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Date		Name etc	Vouchr	Check	Sundries	Rt of Way & Termi Prop.	Constr and Other Exp.	Rent of Office	Equipm't	Paid for Old Bonds	Uprtng Expn.
1903		Brot forward			1500.00	23005.40	17031.19	333.33		700.00	
Nov	18	Dowling & McGunnigle	158	1297			1836.00				
	—	Recording Deed 75 Telegr 40	159	cy			1.15				
		Ry & Bridge fare in Nov.	160	cy			17.05				
	22	Howard Watson—Assg'y	161	1300			10.50				
	27	H. T. Kent	162	1304						250.00	
Dec	2	C. B. Everly	163	1305			5.30				
		H. J. Maginnitte	164	1307			5.50				
		G. A. Koerner	165	1308			30.00				
	5	F't on culvert pipes	166	1310			10.00				
		C. F. Stephens	167	1313			166.80				
	12	H. Blattner	168	1312			1.50				
	13	Recording Deed	169	cy		1.00					
	15	A. S. Aloe & Co. 128.10	170	1314			3.70				
	16	Postage	171	cy			1.00				
	—	J. M. Holmes	172	1317			50.00				
	21	Dowling & McGunnigle	173	1323			1520.80				
	—	H. J. McGuinettie & Co and C. B Everly	174a	1328			4.50				
	23	H. C. Marshall 4 ed 2 cy	175	1329			6.00				
		Ry and Bridge fare to Dec	176	cy			4.75				
	29	G. A. Koerner	177	1337			50.00				
Jan	5 04	C. F. Stephens	178	1340			161.15				
	—	Security Bld'g Co.	179	1341				333.33			
	8	Benner Liv. & Fuel. Co.	179a	cy			4.00				
	19	Dowling & McGunnigle	180	1345			1862.54				
	23	Sheriff (Rel trips Ry)	181	1126		7.80					
	—	H. J. McNulty et al Witness	182	cy		5.00					
	26	A. S. Aloe & Co.	183	1346			7.35				
	—	G. A. Koerner	184	1139			50.00				
	—	Allen & Mooney	185	1348			9.70				
	—	W. H. Hill (see S H L Deed)	186	1347		50.00					
	—	Woodward & Tiernan	188	cy			80				
		Railway Bridge fare to Jan Telgr. 37 & lunches for Moss	189	cy			34.50				
	29	St. Clair Co. Trans. & F. H. L. Jockey Club	190	1350		1650.00					
		H. C. Thuling—2ds Court	191	49			15.00				
		E. C. Rice & D. R. Wieder.		1351							
	30	Witnesses	192	1352		40.00					
Feb	1	Exp. of trip to Terre Haute	193	cy			13.50				
	5	C. F. Stephens	194	1356			161.80				
	6	Engineers Asst—2	195	cy			7.50				
	7	J. A. Smith—Witness	196	1358		30.00					
		Carried forward			1500.00	25005.40	23158.26	666.66		1000.00	

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Exhibit B.

Date		Name etc.	Voucher	Check	Salaries	Road Way & Terml Way.	Constr. and Other Exp.	Rent of Office	Equipment	Taxes on Old Roads	Operating Exp etc.
					1,440.81	25869.40	221.58.30	666.66		2110.15	
	1894	Brot forward					50.00				
Feb	8	G. A. Koerner	197	B-41							
	10	W. H. Bell	198	13.0		3.40.00					
	—	C. F. Stephens Trip to Evansv.	199	13.0		12.70					
	—	Telegr 50 Recording Deed 50	200	13		.100	.70				
	16	W. J. Britt	201	13			1.40				
	19	Jane E. Snyder Ind	202	1303		147.50					
	20	H. E. Schrader	203	13		5.00					
		O. A. Krebs	204	B43		62.00					
		Rx and Bridge fares in Feb	205	13			11.20				
	24	G. A. Koerner	206	1307			140.00				
Mch	2	Security Bldg Co.	207	1374				333.33			
	3	Engineer Asst	208	13			1.00				
	5	C. F. Stephens	209	1378			175.00				
	13	Cotton Comp Co.	210	1386		3110.00					
	14	La Clede Fire Brick Co.	211	1389			67.50				
	15	Court Cost vs. Comp. Co.	212	1391		130.05					
	16	A. S. Aloe & Co.	213	1392			1.30				
		J. J. Tiernan	214	1394			6.00				
	19	F. A. McCanaughy	215	1395		101.00					
	22	St. L. A. T. H. Ry. Co.	216	1398		4100.00					
	23	Dowling & McGunnigle	217	1397			132.10				
	—	Woodward and Tiernan	218	1398			1.70				
	24	Nich McCracken (see S H L Deed)	219	1399		1142.00					
	—	Francis La Valle (do)	220	1401		157.00					
	—	Livery & Bridge fare	221	13			2.10				
		Fred La Porch (see S H L Deed)	222	1404		158.00					
	26	J. J. Tiernan	223	13			4.70				
	28	H. J. McNulty	224	1407		974.00					
	24	28Notary	225	13		4.00					
Apl	2	F. A. McCanaughy (see V. 290)	226	1408		50.00					
	3	C. F. Stephens	227	1411			161.80				
	6	Recording Deeds	228	B44		7.25					
	11	J. W. Yantis	229	1417		75.00					
	—	Fred La Porch (balance S H L Deed	230	1418		25.20					
	20	F. A. McCanaughy	231	1420		50.00					
	—	Woodward & Tiernan	232	1421			12.00				
	21	C. F. Stephens (Trip to Springfield)	233	1423		28.70					
	—	Dowling & McGunnigle	234	1424			1477.00				
	—	Telegraphing					.85				
		Ans't Forward			1560.06	36372.00	2961.71	666.66		1000.85	

Delmonico & Bidwell, City Ry. Co.

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Exhibit H.

Date		Name etc.	Voucher	Check	Sundries	R/W & Terml Prop.	Constr. and Other Exp.	Rent of Office	Equipm't	Paid for Old Bonds	Oprtn'g Exps.
1894		Brot forward			1500.00	36352.00	25817.71	899.99		1000.00	
Apl	25	Switching car culvert pipe	234a	cy			1.50				
	—	F. A. McCunnaughy (see V. 293)	235	1427		50.00					
	—	J. M. Holmes (trip to Cairo)	236	1429		15.00					
May	1	Telegram	237	cy			.25				
	—	F. A. McCunnaughy (see V. 293)	238	1432		50.00					
	2	C. F. Stephens	239	1433			180.45				
	3	Security Bld'g Co.	240	1435				233.33			
	7	Poor's Railroad Manual	241	cy			2.00				
	8	Postage	242	cy			1.55				
	—	Recording Contract	243	cy		4.00					
	14	Thos May Jr.	245	B45			4.50				
	15	A. S. Aloe & Co.	246	cy			.21				
	18	Woodward & Tiernan	247	cy			.80				
	19	J. J. Timan	248	1444			5.10				
	21	F. A. McCaughey (see V. 293)	249	1449		100.00					
	26	L. & E. & St. L. Cons. Ry	250	1450		2650.00					
		Witness & Hotel Exp.	274	cy		261.40					
	25	Fr't on piles	252	1475			88.02				
	28	Silas Ewards	253	cy			5.00				
	31	Thos. Kavanaugh	254	cy			6.00				
	31	Ry & Bridge fare	255	cy			12.65				
	30	F. A. McCunnaughy	256	1451		69.70					
	31	W. C. McCreery	257	1452			29.50				
June	1	J. M. Holmes	258	1453		25.00					
	1	H. J. McNulty	259	cy		5.00					
	1	Telegram & Notary & Blank Deeds	260	cy			1.30				
	1	C. F. Stephens	261	1454			152.25				
	1	C. H. Stephens	261a	cy			10.00				
	5	F. A. McCunnaughy Atty	262	1455		25.00					
	6	F. A. McCunnaughy	263	1457		25.00					
	8	G. A. Koerner	264	1458			150.00				
	11	C. F. Stephens (to Chicago)	265	cy			14.75				
	14	LaClede Fire Brick M. Co.	266	1463			108.50				
	18	Ordinance No. 378—Street Crossing	267	1467		200.00					
	—	Simmons Hardware Co.	269	1468			13.00				
	21	Recording	270	cy		.75					
	21	Woodward & Tiernan	271	cy			.40				
	21	B. R. Warehouse Com. (Exp.)	272	1471			30.00				
		Am't Forward			1500.00	39233.45	28403.44	1133.32		1000.00	

Date		Name etc.	Voucher	Check	Sundries	R of Way & Terms. Way	Constr. and Other Exp.	Rent of Office	Equipm't	Paid on Old Bonds	Operating Exp. etc.
1894		Bfwd forward			1500.00	30333.40	28493.44	1333.32		1000.00	
June	21	Ry and Bridge fare	273	cy			2.00				
	22	W. A. Rose	274	1472		21.72					
	—	Mrs. Wilde—Option	275	1473		10.00					
	25	Thos Kavanaugh S.83 & F from 665	276	1474			15.50				
	30	J. A. Insley	277	1479			208.40				
July	2	J. M. Holmes	278	1480			24.00				
	—	Wiggins Ferry Co.	279	1481			31.86				
	—	C. F. Stephens	280	1483			179.91				
	—	J. A. McCannaughy (see V. 298)	281	1485		50.00					
	3	Frt on Ties	282	1487			169.49				
	10	Frt on Lumber	283	1492			70.92				
	3	Frt on Timber	284	1488			66.80				
	11	Recording 2 Deeds	285	cy		1.75					
	12	H. B. Wagner	287	1495			150.63				
	16	Dowling & McCunnagle	288	1497			1524.48				
	—	A. S. Aloe & Co.	289	cy			.40				
	17	Frt on Rails	290	1498			22.65				
	17	Frt on Piles	291	1499			43.70				
	18	Map of Belleville	292	cy			2.00				
	17	F. A. Cannaughy Mc see V. 223, 235, 238-240, 281	293	1500		400.00					
	20	J. Riedesel (P. R.)	294	1501			200.00				
	—	Wiggins Ferry Co.	295	1502			36.75				
	—	Mechanics Bank (2 car rails)	296	1503			341.69				
	—	W. H. Hewitt	297	1504			12.25				
	24	Jno. M. Holmes (Fee Condemnation suit	298	1506		200.00					
	—	C. F. Stephens (trip to Ft. Wayne)	299	cy			21.25				
	—	Frt on Lumber	300	1507			54.00				
		Bridge & Car fare	301	cy			2.00				
	28	J. A. Insley—Rails	302	1511			2021.87				
		H. B. Wagner	303	1512			65.00				
	30	Frt on Timber	304	1513			64.28				
	31	J. A. Insley	305	1514			8360.15				
	—	J. Redesel	306	1515			107.95				
Aug	1	W. H. Roundtree (Piles)	307	1516			200.12				
	2	Shaw Rimmel & Co	308	1517			213.07				
	—	O. W. Phillips (Piles)	309	1518			8.00				
	—	Wiggins Ferry Co	310	1519			30.63				
	—	J. M. Holmes	311	1520			25.00				
		Am't forward			15.00	40016.92	41471.93	1333.32		1000.00	

Objected to unless it is accompanied by some showing on the part of Mr. Leathe that it is the same paper.

Mr. KOERNER: I will supplement it by the evidence.

The REFEREE: It may be filed.

Mr. KOERNER (to the witness):

Q. Concerning the disbursements that Mr. Leathe claims to have made and charged to the Crown Coal and Tow Company (the first on the paper marked Exhibit F filed with the Special Master), you say you have examined the statement, Mr. Thomas?

A. Yes, sir.

Q. Is it not true that all the items appearing there were paid out by Mr. Leathe for the benefit of the Coal Company?

A. I said in my examination I didn't know anything about it personally except what Mr. Leathe said.

Q. Except what he said?

A. That is all, except a very few of them that I know personally.

Q. Well, we will see whether you know about them?

A. I know most of them from his information; I know some of them.

Q. You say that he paid for the tug boat Archibald Parker $6000?

A. I know that from Mr. Adams and Mr. Leathe.

987 Q. Did you know he paid Joseph Ehrnstein $1000.?

A. I know that from Joseph Ehrnstein and Mr. Leathe.

Q. At that time?

A. That I know he did, because I believe I know he was present when that was done, the $1,000.00.

Q. Did you challenge the payment to Peter Schwinn of $3,375.00?

A. I don' challenge any of those things.

Q. You say you don't know about these payments; I want to see whether you do now?

A. I know that he bought that coal land; I know that he paid ¼ cash, and I know that he gave his notes and mortgages for the balance his individual notes and mortgage on the land; I think I drew most of it myself.

Q. You know that he paid to Griffith and Bogy for the Western Coal and Tow Company $22,100.?

A. I know that from Mr. Leathe and Mr. Bogy.

Q. That went to the company?

A. It went into the Crown Coal and Tow Company.

Q. Valentine Keck, $1,000.00?

A. I know that very well.

Q. Jacob Voellinger, $2500.?

A. I think I was present when that was done and when Valentine Keck got his too, and assisted in all of the work.

Q. These items for copying to Twing, and recording deeds?

A. That I don't know.

Q. The deeds were recorded?

A. Oh, yes, I don't know that of my own knowledge; I have not taken that out at all in my account in that case except to show that it was before the 10th of March; it was included in the $118,500.

Q. Yes; in bulk; and you continue to go into detail. I will ask you this question, whether it is not true to your knowledge that the items charged by Mr. Leathe as having been expended for the Crown Coal and Tow Company in and about this business, are not
988 correct?

A. No.

Q. And not expended by him?

Q. I don't know that.

Q. You don't know whether it is or not?

A. I don't know whether it is correct or not.

Q. You don't mean to say that any of these items are not correct?

A. Yes, I do.

Q. You do?

A. I mean to say that in many of the items I don't know anything as to whether they are correct or not; I object to them not as being not correct, I am not disputing that.

Q. Well, now, you don't wish to say that these disbursements were not all made individually in fact by Mr. Leathe for the benefit of the Coal Company?

A. No, sir, I don't, I don't say that.

Q. You say that is not the case?

A. That is not the case; many of them were. I tell you I made my list out there and explained in the explanation, which is the claim I made before.

Q. I confess I don't understand it; I will have to follow it. You don't challenge the items charged under the head of Cash for Deposit?

A. No, sir, not one of them, because I don't know anything about that; therefore I put them all down as having been properly made in my list and not disputed.

Q. Do you challenge the items Tug boat repairs and things of that character?

A. No, sir, not things of that kind I don't challenge, excepting as I say again if they were before the 10th of March, 1894, I claim they were paid by the $118,500 in bonds.

989 Q. I understand you; that is a different question; that is a matter of construction and argument. I am asking you now whether these payments were made?

A. No, I could not tell you all of them; I can't tell you about that.

Q. You don't challenge the item of Payment on the protested note of Bart S. Adams and others?

A. For $4,000.00?

Q. $4,500. and odd?

A. No, sir, I don't challenge that at all; I was informed Mr. Leathe had possession of the note afterwards, and I presume from that that he paid it.

Q. You don't challenge the item of Howard Watson, lumber?

A. Oh, no; I challenge none of them except those mentioned in my schedule; and a few of those as I explained I could not challenge to my own knowledge.

Q. Here is one to Mr. Holmes, December 16, 1893, of $62.50; you have no objections to that, have you?

A. I don't challenge it; I put it in as attorneys' fees in my Attorneys' Fees list as you will see; I don't think that the charge to the Coal Company for attorneys' fees,——

Q. The charge for the item of interest to Ehrnstein, $150.00, February 20th, 1894?

A. That I challenge, yes, sir.

Q. Why?

A. February, 1894, no, I don't challenge that.

Q. E. L. Thomas drawing mortgage $25.; that is all right, I suppose?

A. I challenge that; it wasn't $25 that Mr. Leathe paid; he made a mistake about that.

Q. What was it?

990 A. It was $125. I drew the mortgage at the suggestion of Mr. Holmes, and the fee was to be left to him, and Mr. Leathe wanted me to state what the fee would be, and I told him I couldn't and we left it to Mr. Holmes to fix, and Mr. Holmes fixed it at $125., and Mr. Leathe paid the $25., and declined to pay the other $100. I sued him on the bill that went to appeal; he appealed it to the Circuit Court and then paid it and I got it.

Q. This payment as to the $25.?

A. There is no charge payable to me anywhere for $100.00; I got $125. out of it; there is no question about that.

Q. I will read some more here; Peter Schwinn, interest on note, February, 1894?

A. Yes, sir, I challenge that, as I say all of that Schwinn and Voellinger coal land business went into the settlement of March 10th, 1894.

Q. You don't challenge the item as a payment?

A. No, not as a payment I don't challenge it, that he didn't pay those things.

Q. He had to pay it for this Company?

A. Not this payment, no; I don't say that; I say that the Company has already paid it to him; his notes were his individual notes not in any way that he had not paid the item, I won't say that; but these notes were his individual notes.

Q. I understand that; what I was trying to get at is if you will help me in it, whether or not these things all went for the benefit of the Company?

A. They all went for the benefit of the Company, those things.

Q. W. A. Ward and Elizabeth Ward?

A. That is the same thing, the Phillips heirs and Jacob Voellinger and Mrs. Mary Voellinger.

Q. Small items like railroad bridge plans and copy plans,

991 you don't challenge those things.

A. I don't challenge those things until after Nov. 8th, 1895.

Q. Phillip's Ward and Voellinger?

A. That is on the Coal land matter, Mr. Koerner; and that was

paid by Mr. Leathe for the benefit of the Company. This exhibit D—Dillon Sp. M. is a copy, I suppose?

A. That is all the earmarks to it that that is the same thing.

Q. Where are the originals?

A. Mr. Leathe has the originals; those are examined copies of the originals that Mr. Smith gave to Mr. Leathe here; I compared those with the one that you have in your case, the printed one and find it to be exactly correct, except in one part; I note that that was the one that Mr. Leathe produced in my case; it was compared with that by myself.

Mr. SMITH: They were compared with the originals?

A. There have been corrections made that I compared to suit the corrections Mr. Leathe made in his case with me, the original one that he filed.

Mr. KOERNER:

Q. The costs in the case against Chipley; you don't challenge that, do you?

A. What case was that?

Q. Crown Coal and Tow Company *vs.* Chipley?

A. I think if I have it would be an improper challenge; that would be properly chargeable against us, the Crown Coal Company *vs.* Chipley.

Q. Yes?

A. That would be properly chargeable against us; Mr. Leathe's receipt is here for that; it ought not to be charged there. He received satisfaction of the judgment. No, I didn't put that in my list; I don't challenge those costs; I learned since that Mr. Leathe
992 received those, and they ought not to be challenged; the amount is a proper charge; that amount is a proper charge; there, but I have not put them in my list.

Q. Well, now, this paper, Exhibit F. shows or foots up disbursements of $16003.21 up to the last item, the charge being September 24, 1898. Now, as I understand you, without entering into all the details or smaller items, as I understand you it is true that Mr. Leathe paid out substantially this amount?

A. I could not tell you.

Q. You could not? Well, now, pass over that and get any item you seem to know?

A. Those I don't know of that he has paid out, a great many things he paid out that I don't know anything about, whether he paid them or not.

Q. Then I will have to go into detail again?

Mr. SMITH: I am perfectly willing to state to the Master and the Master will naturally draw that inference that if we can't contest it we will of course assume that they have been paid; by contesting them he will find without actual knowledge of the disbursement, and if there is no explanation, they are wrong.

The REFEREE: I don't know what testimony is in; I suppose Mr. Leathe has or will testify to the correctness of those items.

Mr. KOERNER:

Q. It is true, Mr. Thomas, it seems to us, he has paid those when you look at the account or analysis as you call it there he does not come to the same results?

A. Yes, I do precisely the same result.

Mr. SMITH: He does, for this reason; here is his very analysis headed proper charges; you can't get any better definition.

Mr. KOERNER: If you go through it you won't find any improper charges for those amounts, you won't find them at all.

993 Mr. SMITH: The only contested matters are those under the head of improper charges, those I examined him about; he has explained them why he calls them improper charges; all the rest of the items are *are* undisputed. We put them under the head of proper charges.

Mr. KOERNER: You will find out the result is exceedingly difficult to understand?

A. The result of what he says he has put out is not difficult at all; what we claim to be improper charges are separated here; what we don't know anything about and what we know to be proper charges.

Mr. SMITH: For instance run down all that list and you will find $50. excluded; now, Mr. Thomas' testimony is that ought to be taken out for the reason that it was a stenographer's fee, for illustration in a case which was brought by Mr. Leathe and which was purely personal.

Mr. KOERNER: We can't pay much attention to these small items.

Q. Now, there in March, 1894, improper charge of $2281.86; what is that?

A. Coal lands; let me see it there. Those are the payments of interest that I have marked here, $2281.86.

Q. March, 1894?

A. March, 1894.

Q. Why is it improper to pay the interest?

A. It wasn't improper to pay interest.

Q. I see you mark it as improper here?

A. Certainly, it is a coal land charge and that was paid since the settlement of the coal lands.

Q. That is a different thing; you don't mean to say that it wasn't money which he paid for the benefit of the Company?

A. Certainly not; this is what I mean to say and did say in explanation, I said it yesterday, that money expended as per settlement March 10th, 1894, $66377.99 you will find it there; and on this list interest to March 10th, 1894, $4067.63; notes given by Mr. Leathe for coal lands in February and March 1893,

994 $45680.50; interest on same to March 10th. 1894, due but not then paid, $2370.36, and he paid $2000; that makes $118496.48.

Mr SMITH:

Q. For which he got bonds?

A. That is it.

Mr. KOERNER:

Q. That is all correct. Now, the construction of that is a different question; I am trying to show that he paid those moneys out for the benefit of the companies entirely?

A. That is it, that is right; he did; he paid it *p*ut for the company.

Q. The whole business?

A. That I don't know anything about, except those items I put in afterwards, except private matters; I don't know many of them in this case.

Q. Let us see what those items are; it is necessary to see if we undertand that all these items in these accounts were paid out by Mr. Leathe and went for the benefit of the coal land?

A. No, I don't say they are all paid out on that.

Q. As far as you know?

A. As far as I know, many of them I know nothing about; I don't challenge those I don't know anything about; that is it.

Q. That is sufficient?

A. I haven't charged it; here is the explanation beginning with money expended on the coal land items, taken out.

Q. What items did you take out of the coal land?

A. Only a few of the coal lands I took out, coal land items, including interest carried into statement and paid by the bonds $49072.77; the other items I took out are $1394.88 of the Gundlach claim; they are all right along there, I have explained every one of them.

Q. At any rate that payment to Gundlach, that was a payment that Mr. Leathe made on behalf of the Crown Coal & Tow Company, and it paid a debt of yours?

995 A. No, that debt was not a debt of mine but of Mr. Leathe's, as I explained to you; he took an assignment of those notes and never released it to me until afterwards.

Q. Well, then, the result was It did relieve you of that debt?

A. The result was that the Crown Coal & Tow Company got the coal and the surface of the land; they got the right of way and I got paid for it by their agreeing to pay certains debts; that is all; I knew I never paid it; they agreed to pay certain debts; it was a transaction just the same as a piece of property the owner would have to pay for it, or give it to them.

Q. That is the land on which you got Gundlach how much money?

A. I got $11000.

Q. $11000, upon which you gave a mortgage upon this land?

A. On that land; then I borrowed from Pfeiffer $2000 for which I gave a mortgage.

Q. That is one Pfeiffer, and you borrowed from another Pfeiffer?

A. That was on another land entirely; that did not go to the Coal Company, nothing to do with the Coal Company.

Q. It was also on the coal lands, wasn't it?

A. Yes, sir, that was; it was a blanket mortgage; it was on the railroad lands originally.

Q. On the railroad land, not on this land?

A. Yes, sir, originally it was on the railroad land. It did not arise out of the coal transfer.

Q. And these sums which you thus borrowed from these gentlemen as stated formed part of what you call your investment in the enterprise?

A. Well, yes, I had invested the money that I borrowed; I borrowed money and invested it, yes, sir.

Q. And these moneys now were paid by Mr. Leathe and that satisfied that debt.

A. No, they bought the coal and they purchased rights of way.

Q. Exactly; but it went to satisfy your debt, didn't it, your individual debt?

996 A. Yes, sir, but it was not to pay the debt; that is to say it was to purchase right of way.

Q. It paid the debts to Gundlach, Pfeiffer and Pfeiffer?

A. Not the other Pfeiffer, not to Alexander Pfeiffer.

Q. He was paid also by Mr. Leathe?

A. Yes, sir, he ought to have paid him under another mortgage on that land.

Q. What I am trying to get at is, he paid those?

A. He got the certificate of release; I don't know he did that except I got the release deed here.

Q. That is true; now the result finally was that you get the money, or your debts were paid by this transaction?

A. Mr. Koerner, you may call them debts; they were purchase money of this property: he was paying the purchase money of this property.

Q. Very well?

A. The payment of $13000. there arose out of the fact that he should have paid it long before, but he let it run up and he foreclosed long since November 8th, 1895; that is when he ought to have paid it and ought not to recover any more since that time; he ought to have paid it long before.

Q. There were reasons, Mr. Thomas, were there not, why one of these matters could not be immediately settled?

A. No, none whatever.

Q. You don't know of any?

A. There were no reasons why they could not be settled; that is to say there were reasons; I don't know whether the reasons were good or bad, whether Mr. Leathe had the money or not; I don't know that; but there was no reason why they could not have all been arranged for; none whatever, because in the agreement

997 it was the understanding these mortgages could have been extended at any time if Mr. Leathe complied with the arrangement.

Q. Mr. Leathe seems to have paid the Gundlach matter off in March, 1895?

A. He didn't pay it off, Mr. Koerner, as I stated, he did not pay it off at all at that time.

Q. He paid money I mean at that time?

A. I suppose he did; I don't say he did not; I suppose he bought the judgment and the decree from Gundlach.

Q. That is before March 27th, 1895, if that is the correct date; well before he received the $500,000?

A. Yes, sir.

Q. And then why is it, when he did not have the money then, why shouldn't he meet the interest which he paid?

A. I have calculated it all to that date; come to think of it; that means the attorneys' fees and costs, the different kinds of railroad attorneys' fees and the expenses and costs and all that.

Q. Attorneys' fees to whom?

A. Well, there was attorneys' fees to Winkelman and McKonicke, and I think they got $400, probably more than that, I believe; I am not certain about that; I know I took the exact amount of the item, the full amount that he was entitled under that.

Q. You charge him with $1,394; that includes the interest?

A. Well, I could not say exactly what the items are made up of. If I had a little time to go and look over it I could tell you what the items are made up of.

Q. He is entitled to the interest?

A. He is entitled to the interest up to the time he paid it.

Q. And afterwards up to the time he paid the money?

998 A. He ought to be entitled to interest up to November 8th, 1895. No question about that on all his payments that was our agreement.

Mr. SMITH:

Q. That is the way they have been calculated?

A. That is the way they have been calculated: I can go through the calculation again; I can't carry it in my head.

Mr. KOERNER:

Q. It is absolutely impossible that the interest would have been $1,394?

A. I can calculate it for you again, Mr. Koerner, what is the amount there?

The REFEREE: Unless you have already given that in your statement it will be necessary for you to have it sometime or other so that I can get at it.

Mr. KOERNER:

Q. Coal land item to Gundlach, March 27th, 1895, of $13,642.33; Company should have paid $12,247.50; charged to Leathe $1,394.88. I am reading from Mr. Thomas' paper?

A. I took that amount, the amount the Company was charged with for the Gundlach note, and calculated the interest on it at the time that Mr. Leathe got his money and took it from the amount that he is said to have paid; that leaves or makes the balance of $1,394.88.

Q. He paid the amount of the decree of foreclosure?

A. I suppose he did; I did not see him pay it; but he lost that amount to the company by not paying what he agreed to pay.

Q. Well, he did pay it, this amount of money out for the coal land for the company?

A. I see that he produces this certificate of this decree and bill of Gundlach.

Q. The Company got the benefit of it?

A. The Company never had any title to it or had any right to it until November, 1895, when he got a release of these things.

999 Q. Well, he or the Company had to pay it?

A. They paid it at that time, that is right; they paid it at that time.

Q. And that money went for it?

A. The money went for it though he wrongfully paid that much; that is to say the payment of the excess was his own fault.

Q. He had no moneys of the company's in his hands to pay it with prior to that time, had he?

A. He agreed with me personally to pay it, and I gave him my note individually; he got my note for $970.85.

Q. That don't pay it, does it? Well now, in a similar way he paid the Anthony Pfeiffer deed July 10th, 1895; that was all right?

A. He purchased the certificate of purchase of Anthony Pfeiffer after the sale and he had it in his own name after November 8th, 1895, and released it to my wife.

Q. Very well?

A. That is the time he must have paid it for the Company, that is the only time he could have paid it.

Q. Before that time he had no money for the companies to pay it with?

A. I don't know that; I only know he agreed to pay it; that is all I know about it.

Q. He had to pay it, and wouldn't he have to pay the interest; now if he paid it before he would have been entitled to interest for it?

A. Yes, sir, he never paid it until after November 8th, 1895; he agreed to pay it personally, and the loss was occasioned by his own conduct.

Q. The loss of interest up to that time?

A. No, sir, I calculate interest on it all, Mr. Koerner.

Q. Expenses, then?

A. Everything loss; yes, I have calculated interest, I have calculated the interest on the amount that was due on the 10th day of March, 1894, up to the 8th day of November, 1895, and have

1000 given him credit for the amount.

Q. We will have to show the vouchers for what he paid?

A. I know you got the certificate; I have seen the certificate; I know you have got the certificate, I don't think you have to show your vouchers; I don't dispute but what he paid that amount for the certificate; I don't dispute that at all.

Q. Take this item of $9,944, March, 1899?

A. That was a proper charge up to November 8th, 1895, and $8,482. is chargeable to the Company and to Mr. Leathe leaving a balance of $1,461.80.

Q. Now, what charge is that?

A. That is the Adams charge of $9,944 in settlement of Adams 2/3's claim, and the loss went to this account.

Q. Very well; now what is your objection to the $9,000?

A. Why, I object to the companies having to pay interest since

November 8th, 1895, on the $11,000; this is in settlement of 2/3's of the $11,000, $9,944 it amounted to and I presume on that date I calculate interest on it and it would have amounted to that at the date he says he paid it.

Q. Well, that was a note, you know, Mr. Thomas?

A. I know there was.

Q. You may call it by a note, and must call it?

A. That was I presume a payment to the Adams heirs on the note for $11,000 for bonds of the railway; that was a payment on a note I suppose with a balance of the note yet.

Q. That paper whatever it may be whether a note or not, that paper called for $11,000; there is a charge paid here of $9,000 and something?

A. He only paid 2/3's; he has got a contingent claim.

Q. That is true it is a proper indebtedness?

1001 A. It is up to November 8th, 1895; how it can be after that time under his agreement I am unable to see, how it can be proper to pay interest on it. With the interest it amounts to $8,482. I calculated interest from the 29th day of March, 1893, to the 8th day of November, 1895, and it made according to my calculation $8,482 and for that I gave him credit, have deducted the balance between that and $9,944., which is a perfectly proper deduction.

Q. Now you say total improper charges in settlement is $70,650.89; you don't mean to say that he charged that much as having paid out which he did not pay out?

A. No.

Q. You only mean to say that upon your construction of the agreement or construction of the contract and one thing or other that he ought not to be entitled to more?

A. Not my construction of the agreement, but on the coal land items that were paid on the Geary account on March 10th.

Q. They were paid to him by giving him bonds?

A. At par.

Q. By $118,500 of bonds he got at that time?

A. Under the resolution that was passed and in pursuance of it offered by Mr. Leathe and passed.

Q. Yes; now, those bonds were sold you say according to your figures at about 71 3/7?

A. I don't say now according to my figures, Mr. Koerner, I don't say that, I don't know what they were sold at; I only make that calculation as being the price that might possibly be offered Mr. Leathe.

Q. Well, some $500,000?

A. Possibly, yes, sir; there were $500,000 of railroad bonds and $200,000 of coal bonds; therefore necessarily if sold at an equal value they would be less than par.

1002 Q. I suppose there is where the bulk of your difference comes in, that he got only 71% or something like for the bonds, and you charge him with par?

A. In my statement.

Q. Yes?

A. No, I have not charged him at par in the statement at all.

Q. $118,500?

A. I have charged here as having taken them in payment; what he sold them for I don't know.

Q. That is what you mean?

A. Well, I show the items.

Q. Isn't that where the bulk of your difference comes in, right there?

A. In the coal statement?

Q. Yes?

A. In the coal statement, yes, sir, the bulk of it comes right there as a matter of course, because the $118,500 of the account lies right there; the bulk of it makes $118,500 of that statement; it comes in right there; the statement don't amount to but about $190,000 altogether, you know.

Q. Therefore again I think it reaches this point that you don't challenge the payment, the amount of money which he states here as irregular; you only challenge or question whether he is entitled to reimbursement out of the fund?

A. I haven't challenged it, I am not challenging the payments as not having been made that I know of; I don't know that I charge that, I am not challenging the payments as not having been made; I have no knowledge whether the payments were made or not; if he made the others I don't know anything about it; I have taken no exceptions to the question as to whether he made them or not.

1003 Q. This is the Coal Company, Mr. Thomas, which was formed in pursuance of the plan suggested in the agreement of January 24th, 1893, that coal companies and others might be formed?

A. It was formed after that; the thing was done on the 20th day of May, 1893.

Q. It was formed after that; and was quite complicated at that time?

A. It was complicated at that time, yes, sir.

Q. And carried along practically as one enterprise as the railroad?

A. After it was organized and formed it was carried along practically as one enterprise excepting upon the question of the payment of the property; that was different.

Q. So then if Mr. Leathe to-day were compelled to submit to the account as you have got it in this analysis, he would be out a great deal of money, wouldn't he, from those actually paid?

A. No, sir, not if he had conducted the business properly.

Q. If he had conducted it as a matter of fact?

A. He has wasted nearly $30,000 in attorneys' fees.

Q. Yes?

A. Useless.

Q. That is here in that account, Mr. Thomas?

A. Yes, sir, that is in this account.

Q. In this coal account?

A. Well, not in the coal, no, of course; part of it in that; there is very little of it. If I am not mistaken you are asking about the

old companies; I didn't divide it up into coal and railroad, the answer, because you spoke of the entire enterprise.

Q. Well, now, you answer that as to the payments made by Mr. Leathe which you have made, I mean in this respect, that you don't challenge the fact that he has paid out these things, not, to his account of the expenditures in the railroad?

1004 A. I say that I have no knowledge that will allow me to swear that he did not pay this money as he says he has.

Q. In the accounts rendered by him?

A. No, I can't say that he has not paid them; whether he did or not rests with him alone and with parties to whom he paid it. As to the other matters that I speak of when I was present with him to see that of course I know; I know he paid the Brandenburger condemnation because I was present when he did it and made the receipt for him to do it; I know he paid that sum on the road; I have personal knowledge of that; I was present; but others I don't know anything about.

Q. Now among what you call improper charges in the railway matter there are several payments of interest to Mr. Schneider?

A. Every one after February, after the payment of February, 1896; the payment of February, 1896, was most of it proper; I didn't take that off.

Q. Well, now, Mr. Thomas, don't you know the reason why Mr. Leathe could not pay that note at that time?

A. I do.

Q. And what is it?

A. He claimed that there was a dispute as to the land down there between the Air Line and the purchasers.

Q. The purchasers?

A. The purchasers of your Company; first we had taken possession of it in 1893, in March 1893, we took possession of it and built a fence there; that is shortly after its purchase from Judge Schneider; and there was a mortgage on the land; Judge Schneider's estate was good; he had given a warranty deed, or Mrs. Schneider had given a warranty deed and the claim of $2500 was paid off at that time, leaving a balance of $7,500 this mortgage.

Q. Now, there was supposed to be, or thought to be a failure of title?

A. Oh, no, nothing of that kind; a question of line boundaries only.

1005 Q. Of lines; that however took it where there was no crooks in it?

A. It was a bugaboo that arose; I will explain to you the point of that question, and you were employed, and Mr. Leathe and you persisted that the line ran in a certain direction contrary to the decision in Illinois in the case of Kehr *vs.* Schneider, and it was determined upon a division and A. N. Greene against the Graynors, or in the case of Kehr against Schneider, determined it against Schneider. The lines run up the old bank, and I am certain now you were not in that case. The Greenes threw the lines north according to the division that Geary instituted against Schneider, and Kehr had a suit

and Kehr established in the Supreme Court that the line ran in a certain direction Schneider sued the Louisville and Evansville in ejectment and recovered, and got judgment and possession under a writ of restitution; that is the whole case that Graynor instituted; that was that line run there the same way, and that was contrary to the decision of the Supreme Court.

Q. That had nothing to do with this matter, Mr. Thomas?

A. You were attorney for Mr. Leathe all the time.

Q. Not in that matter; I had nothing in the world to do with the matter?

A. I know how that came about exactly, and I have a sort of idea it was mere stubbornness or mere foolishness not to pay off the mortgage.

Q. Don't you know that the purchasers from Mr. Leathe got into a law suit over the matter of lines about that very property?

A. I know that anybody can get into a law suit.

Q. And they employed Charles W. Thomas, and that is as far as I am free to say? and then they got Bogy?

A. No, sir, not that I know of.

Q. Then you don't know that?

1006 A. They got Bogy cheaper; Judge Allen and we all understood that; you understand it too.

Q. I understand that as far as the case had gone they got Bogy?

A. No, sir, I will tell you about it, about that matter, if you want me to on information, but Charles Thomas can tell you all about it. There was no defense to this mortgage, none whatever.

Q. At all events the purchasers had a great deal of trouble in getting possession of their property and had a law suit about it?

A. So I understand.

Q. And through some question of failure of title to that land?

A. The other fellows made a question of course; I never raised any question.

Q. And Mr. Leathe desired to retain this until he could get that disposed of, as he supposed?

A. Well, he ought to retain it; he had interest on the money; he retained money and used it, but he then charged us interest for it; that is all I am complaining of; he is charging us interest on money that he had in his hands; that is all I am complaining of.

Mr. SMITH:

Q. And allowing no interest?

A. And allowing none.

Mr. KOERNER:

Q. He could not stop the interest on that?

A. He could put his money out at interest and use it.

Q. I don't know as he could loan money at any time?

A. That don't make any difference; I only say that my claim is that he had the money in his hands, and this interest is not chargeable to the Company after the February payment.

Q. Now you have here larger items that you mark improper

charges, an item of $10,733.33 of November, 1894, am I right; do I read that right?

A. No, November 1895, Mr. Koerner.

1007 Q. Don't that say 1894?

A. No, 1895.

Q. What was that?

A. That was a payment, part of $10,000 to Bart S. Adams which he afterwards corrected in his statement.

Q. That is his own correction?

A. I say that and the $733.33 is salary to Samuel: He has corrected that $10000 item.

Q. That is services of Samuel's expended for quite a length of time?

A. No, he claims for the Crown Coal Company, or paid to Samuel there; and at that time he was secretary of the Coal Company and went out shortly after; at any rate he did nothing, it cut no figure; Mr. Leathe made him secretary; no salary was to be paid; it was understood distinctly about that.

Q. Then, that wasn't to be paid?

A. No, not in the railroad company; that was agreed on; there was very little work to do.

Q. But in the coal company it was agreed on, and if Mr. Sam Leathe performed any services for the railroad company, for that he was entitled to be paid; I mean work, not salary; if you believe that he did anything it ought to be paid for, and you would not object to it, would you?

A. There was nothing he could do; I would object; he had no right to anything at all. There was an express agreement in the contract that Mr. Leathe and all of us should not receive anything The services were very little; we had a very few meetings and very little done at these meetings.

Q. We will find out from Sam and ask him after a while. What is this $500 in November, 1894; you say here it is an improper charge?

A. That is improper; he has credited himself; he is credited by his book-keeper; he corrected it and marked around it a red

1008 mark;

Q. Well, you got December the same year, $480.36?

A. Those are tax titles that I explained; I don't know whether that was a correct charge or not; there were two of them as I explained, different land; that was on the land at the foot of the bluff.

Q. The result of this tax title purchase was, at all events, that the company got taxes paid on it?

A. No.

Q. The taxes were paid?

A. The taxes were paid for the company for all the companies.

Q. No one else made this payment of $400?

A. I am not talking about this one.

Q. I am talking about this one?

A. That I don't say; I don't know where this came from. I can tell you what I think about it if you want me to. I think it was the

land on which there was suits, in the third subdivision of the commons, and Mr. Leathe failed to pay the taxes, and Mr. Marshall bought it in, he redeemed it, and he had to pay the penalties, I think.

Q. It was the companies' debt, wasn't it?

A. I presume they had to pay it, or else it wouldn't have been a proper amount.

Q. And it is not usual to tax the officers of the company?

A. Therefore, as I stated in my examination, I don't know that that is a proper charge.

Q. You are not challenging it?

A. I do not challenge it; that was one thing I took out; but there was another one like it of $470. I do challenge.

Q. February, 1895, $1025.95; what is that?

A. Why, $961 of that is the Taylor note; that he has corrected himself; the other is small items of costs and things that I thought were not proper, charges to Burton, Clerk of the Court.

1009 Q. Well, what about that Burton, Clerk of the Court, what item was that?

A. That was the $10 item; that was on here on this bill of costs we filed in the Court, a portion of what I took off; at any rate I show here what it is for.

Q. Very well?

A. That is an improper charge.

Q. Isn't that chargeable to the Company?

A. No.

Q. Why not?

A. Why, because it is one of these things that Mr. Leathe refused to settle or do anything with.

Q. What case was that, do you know?

A. My recollection is that it was the Mandamus case.

Q. The Mandamus case?

A. My recollection is it was about that time.

Q. My recollection of that Mandamus case is that it was taken to the Supreme Court and there reversed by consent, wasn't it?

A. It was taken to the Supreme Court and then in 1895, they did not want to have any suit of that kind against the companies and the matter was allowed to go and they paid no more attention to it.

Q. It was reversed by consent, wasn't it?

A. Of course, I let it go; I di-n't care anything about it; that was after the sale, you know that well enough.

Q. I expect those costs would be recoverable back, wouldn't they?

A. Recoverable back, no; it was due to Mr. Leathe's folly.

Q. It was due from you; there was a judgment against you over here; isn't that true?

A. I understand that you had sued me over here like you did for several things.

1010 Q. I didn't have to sue over here; there is a judgment?

A. You understand that I was not to pay any costs; I would not consent to a reversal of the decree by consent that I had won all the way through the case. The reason that I consented to it was

I was told that they did not want this decision against them in the Supreme Court, and I quit; that was all; I had no more interest in it.

Q. Wasn't this the Mandamus to get the books in St. Clair County; wasn't that the mandamus?

A. No, that was not the mandamus; it was for the stock; that was the only one I ever had. No, that wasn't a mandamus for the books.

Q. That wasn't what it was?

A. I think it was for both; that is what I think it is.

Q. I think it hadn't anything to do with the stock?

A. That is my recollection, for both of them in the petition, one was to issue stock and the other was to get the books.

Q. At that time there was no stock in it?

A. I think I had a mandamus for the stock; at any rate that was the mandamus case; that is right; I think it was probably the books.

Q. And you don't think the Company had any right to defend it?

A. I think the company had no right to defend it in the way it was defended; I think that Mr. Leathe ought to pay the stock as promised as provided in his contract; if he had given it to me that case never would have been brought; that was the reason of it, his determination not to let us look at the books nor to give us any statement of it in a reasonable time after, took all of them and everything else.

Q. Well, there is another matter, this $3401.54; you object to that; that has been corrected by Mr. Leathe?

A. Well, he corrected that after he testified on cross examination by myself that it was not a proper claim and denied all about it; then of course, when I cornered him he corrected it.

1011 Q. I beg your pardon, we corrected that as soon as it was discovered.

A. No, sir, Mr. Koerner, in that case he testified it was proper, that it was not improper; that it was a proper charge, that he had never received the money from anybody, and Sam occupied such a position in the Coal Company; then after that they corrected it.

Q. That is the Churchill matter?

A. After he was cornered on it he corrected it.

Q. After it was discovered it was corrected of course?

A. The claim is one now you say that he has discovered.

Q. In June, 1895, $19; what is that?

A. That is one of those costs matters I suppose.

Q. Well, we will see what it is?

A. In June, 1895, that is the Belleville Advocate Company.

Q. Printing of brief?

A. There was only one thing, only one in this that I wanted to state on yesterday. I didn't get to state it. There was a change of the name of the Belleville City Railway to the St. Louis, Belleville and Southern, and it was necessary to advertise for these affairs, according to my recollection in the Belleville Advocate. One of these claims is here; provided it is the same item; I don't know the rest of it; briefs of counsel.

Q. Briefs in those cases which the company had at the commencement?

A. I don't know.

Q. I had all my briefs printed there?

A. I know that there were two cases, of course, that he took up; that was perfectly proper and the company should be chargeable with that; I could not divide the bill you know.

Q. I know; you want to divide them, in order according to your recollection, in your opinion the company should not have carried on and he should not have been allowed it?

A. That is the thing.

1012 Q. If in his opinion he thought it was proper to carry it on, you can have no objection to it and it ought to be allowed?

A. I detail the facts, and I presume it is for the Court to determine whether it is proper or not.

Q. You spoke of something as having been improperly litigated; what was that, as a sample?

A. Yesterday I intended to state it, but in the hurry of making the statement there was something overlooked.

Q. Yesterday you spoke of charging Mr. Leathe with improper litigating the Rice case; that case, the time the suit was brought the claim of Rice was barred by the statute of limitations, was it not?

A. No, sir, not the time the suit was brought.

Q. Well, unless there has been a subsequent promise?

A. Mr. Rice claimed it was not barred by the statute of limitations, that it had not been, and that as president or manager or owner of that stock if I could assist him he would bring it?

Q. Then Mr. Charles W. Thomas bought it?

A. Mr. Charles W. Thomas.

Q. He brought the suit then on the theory, Mr. Charles W. Thomas, that afterward Mr. Leathe had promised to pay it?

A. No, he brought the suit on the theory, on the ground that the company itself recognized it and they agreed to pay it.

Q. Mr. Leathe did not think so?

A. No, he never thought anything was so.

Q. He denied that?

A. He denied everything.

Q. He denied that the $1500, that was the debt, was 30 years old, pretty near?

A. No, sir, it was made in 1880.

Q. Well, 15 years old we will say.

1013 A. 13 at that time, 15 when it was sued on.

Q. 15 when it was sued on; he claimed that it was not a proper debt?

A. No, sir, contrary to every other member of the corporation that was called in, *in* Mr. Chipley, Charles W. Thomas, the secretary, John T. Taylor, Bart S. Adams and Edward L. Thomas; Mr. Samuel Leathe, young Samuel was not put on the stand.

Q. Then the theory was that Mr. Leathe as president had become acquainted with this claim and had promised to pay it?

A. No, sir, that was the only course; Mr. Rice testified to that him-

self; the Supreme Court spoke of it; that wasn't the way of it, that I brought it.

Q. Without the subsequent promise there wasn't any hope of recovery, was there?

A. Yes, sir, the Appellate Court and the Supreme Court both stated that made but little difference; the main thing was, they said, the book upon the case is here, Charles W. Thomas and Samuel H. Leathe and they said they did not blame him for not believing Samuel H. Leathe.

Q. Exactly so, but Mr. Thomas said that Mr. Leathe had previously made this promise, and Mr. Leathe said he had not?

A. No, sir, Mr. Thomas never said that Mr. Leathe made the promise at all, and I know when it was agreed on.

Q. You better refer to the papers?

A. It was agreed on when we sold it that this should be paid, and when we paid off $2500 of the mortgage it was stated in the presence of all of us there and agreed that this debt of $1500 ought to be paid.

Q. Mr. Leathe said he never understood it and never agreed to any such thing, and consequently fought the case?

A. Certainly he said that; I made an agreement with him and he fought my case too, every one of them; he said everything is not true except what he says himself.

1014 Q. The difference between you and Mr. Leathe is somewhat as to the amount?

A. I will tell you what you said about it.

Q. What I said you may say; I have no objections if you wish to? Now, talking about those attorneys' fees, since you remind me of it, when the sale was made, Mr. Thomas, you are aware the questions of the attorneys' fees owing to me and Mr. Holmes for services rendered prior to that time to the companies and to Mr. Leathe was submitted to arbitration; you know that suit; and you know also what the result was?

A. I know from the statements of his papers here.

Q. And the result; you know that judgment was rendered fixing those salaries?

A. In a bunch between you and Mr. Holmes and himself for personal service I also know something else; I will give you a little more of it; what I know since you got on that subject. I will show you your bill of particulars; you have forgotten what they were, perhaps.

Q. I had looked for my office copy of it. (The paper referred to is here produced.)

A. Here is your bill of particulars and charges to Mr. Leathe; you made out a bill of particulars in which you charged him $250 for the bill which you brought, an injunction in his name to enjoin the going on with matters we had agreed upon; and you charged him $2000 in another case there before the Court; charge him $100 in the case before the Justice of the Peace; you charge him $500.00 in East St. Louis on account of the Railway Company; you charge him $100 in the Emge case; that was a condemnation suit which

was settled; I suppose it was worth $25. I tried the preliminary case for three days, the first case in which the dispute was made as to the charter to Mr. Leathe and testified to it, and I tried to get Mr. Leathe up to $100 for it, but he took my note and tried to collect it off of me.

1015 Q. You were a party in interest?

A. That was all right; in that I was not because I had an oral agreement. I want to introduce this bill of particulars.

Q. I am asking the question now. I want to speak of what you said in the forcible detainer case. That charge was for taking the case up by certiorari to the Circuit Court?

A. Yes, sir, to the Circuit Court.

Q. However, that is immaterial?

A. (Witness reading from the paper:) $5000 for advice in drawing resolutions, etc., I believe at those meetings of the railroad company or during that time and two of them were resolutions drawn by me.

Q. Mr. Thomas, those matters were all submitted to the proper tribunal?

A. Not with my consent, they were not.

Q. And for the railway as a matter of fact?

A. They were likewise Mr. Leathe's private affairs and private advice.

Q. And the judgment was had under it, which he paid because he was compelled to?

A. It was mixed, Mr. Koerner, as you state, the statement there shows it was for all of them and there is not a penny that Mr. Leathe has charged there out of that as his private obligation.

Q. Very well, that is all right, we will get to that. I just speak as to the amounts. The condemnation cases were not private matters, of course?

A. They were not; they were perfectly proper; to charge for them would have been all right if he had employed you by the year as he ought to have done; any man carrying on a business like that would employ an attorney by the year.

1016 Q. Very well, I am speaking now about and trying to get at what you say is his private affairs and private business?

A. How are you going to divide it, Mr. Koerner?

Q. I will show you?

A. You testify and divide it for us.

Q. I think you can do it, Mr. Thomas. Now, for instance, Mr. Leathe was a party complainant as well as the railroad company, the Belleville and St. Louis Ry. Company in a bill filed to enjoin a certain law suit brought in St. Clair County against the Belleville & St. Louis Ry. Company; that also included a defense of a vendor's lien case. Now, Mr. Leathe was a party to those suits, and isn't it true that all of those questions that *that* were litigated in that matter were questions that concerned the railroad and concerned the application of this fund?

A. It only concerned the conduct of Mr. Leathe; that is all.

Q. That is your judgment of it?

A. That is the whole thing of it; the whole thing his conduct; that is all there was to the whole business.

Q. Is that the way of it; it is the conduct of Mr. Leathe?

A. Yes, sir, it was the non-compliance with the contracts, that is all.

Q. Then I will have to show by the witness, and these were all witnesses which were examined?

A. That all rose out of this railroad matter, Mr. Koerner; and when I tried to get Mr. Leathe in August to settle this matter with us he would not do it, but had tendered these bonds back so that they could be distributed to those that went into the business; I tried to get him to do it, first the man that was before me by suing the Belleville & St. Louis Ry. Company with which Mr. Leathe had nothing to do, and then giving him notice to defend, which he did.

1017 Q. Those cases of Shedd *vs.* Leathe, Shaw and Ferguson against Leathe and New York Bank Note Company against Leathe, I believe you have stated that you instigated those suits?

A. They wanted me to bring the suits and see if I could not collect those notes, two of them.

Q. And you brought them not against the Company but against Mr. Leathe?

A. Against Mr. Leathe.

Q. And Mr. Leathe defended it, and you think that he ought not to charge the company with it?

A. Certainly not; it is like any other suit that a man has to defend; he has to defend all suits against himself always.

Q. The result was that one of those cases was tried and Judge Canby announced his decision in favor of the defendant, and thereupon a non-suit was taken?

A. Yes, sir, that is the result by taking a non-suit. I could tell you something different, and Judge Canby will tell you something different to-day, if you will ask him.

Q. That is the record in that case?

A. That is the record.

Q. I remember his decision, his own words exactly?

A. That is the record, I remember it; that is correct.

Q. If he has changed his opinion about it since I don't know?

A. He changed it immediately, the next day.

Q. I am not aware of that?

A. You ask him and he will tell you.

Q. Then there was a suit commenced by Edward L. Thomas against Samuel H. Leathe in the Circuit Court of St. Clair County, removed to the United States Circuit Court and there tried. Now, Mr. Thomas, didn't the difficulty over that arise over this railway matter?

1018 A. It arose out of the violation of the contract that Mr. Leathe made then, and not out of the railway which ought not to be responsible for it in any way because it was a definite contract that I claim on which I sued him on the ground that that contract had been passed on in the injunction case, and the sole question in the case was one of *res adjudicata,* and not a witness was heard.

Q. Nevertheless there was a decision in favor of the defendant?

A. Certainly the Court of Appeals decided it on the pleadings made up in the case; the question I claim was not presented by the counsel and therefore it did not amount to a *res adjudicata*. In other words it decided a contract the way U. S. Supreme Court decides it in the Sack County case, Cromwell *vs.* Sack County.

Q. You think that was not a matter in which the railway or the fund had any interest?

A. None at all, none whatever, not in any manner whatever.

Q. Those are cases in which Mr. Leathe personally was interested; those you claim were all cases in which were private matters and against him and not the company?

A. No, Mr. Koerner, not in one of the cases you have mentioned, that I claim, not one tithe; the others were not; the Adams cases were not; they were settlements I think.

Q. In this bill we are talking about?

A. In my claim, that is up to that time?

Q. Yes, up to that time?

A. Well, not the coal company cases, you know, were not up to that time; Mr. Leathe's cases against me, one or two of them were defended here, one on a $750 note was not; the others was.

Q. That is not charged in this bill?

A. No, the notes ought to be charged here; let me see, I can tell you which ones I claim are not proper charges. The first case, condemnation case would be a proper charge, that is in a proper
1019 amount.

Q. Well I am not talking about whether the charges were against the Company or against Mr. Leathe?

A. Well, the Gundlach case.

Q. That is according to your view of the matter?

A. The Gundlach case is not.

Q. I think they were all Company matters?

A. The Gundlach case was not a proper charge.

Q. It was a company case?

A. The Waddock case was not.

Q. I am asking whether or not you consider it a proper charge or not, or whether it is a case in which the companies were parties?

A. No.

Q. You say they were not?

A. In the mandamus case they were in that case, they were parties; in the Waddick case they were not.

Q. The case was brought to see whether a certain man could act as director, wasn't it?

A. That is what Mr. Leathe claimed.

Q. That was the question consequently it was a question affecting the company altogether?

A. Affecting Mr. Leathe entirely, not the company; affecting Mr. Leathe and nobody else; the company had nothing to do with it.

Q. Now then these matters being submitted to the judicial tribunal were settled by judgment, were they not?

A. So I understand but they were settled in a lump without division.

Q. Well, I understand that?

A. So that it is utterly impossible to arrive at it from this; it is what the arbitrators, what Mr. Leathe's arbitrators say is not a private matter; you can't arrive at it from that.

1020 Q. Well, then you have stated distinctly what you thought was his private part of it?

A. No, I have not finished it; there are a great many cases in there.

Q. Will you state it according to your view, because I am going to see how it was?

A. You can show how it was. Now for instance, as I explained the mandamus case and Waddock case, and the cases brought by myself and those pending at the time you have the $2,000 charged therefor, the case of the First National Bank against Leathe; the suits in the County Court of St. Clair County and the National Surety case, three suits of the Belleville & St. Louis for use of Edward L. Thomas.

Q. The suit of the Yock Mining Company; is that against Mr. Leathe?

A. That was against the Company with Mr. Leathe's——

Q. That is a different matter?

A. I want to explain; his refusel to carry out anything, for instance our bonds and those things he refused to do. The mandamus case of Edward L. Thomas.

Q. That is about the books you have now agreed?

A. The mandamus of its records; the Holmes affairs.

Q. That mandamus case was not against Mr. Leathe, that was against the Company?

A. No, against the company. Shedd and Ferguson against the company, all against the companies, but the result of the absolute refusal of Mr. Leathe to perform and carry out what he ought to have performed.

Q. That is the result of what I am asking you about; I am trying to get at what the cases are about?

A. Attending meetings and drawing schedules $5,500; I suppose that is services performed for the company. I notice that Mr.

1021 Leathe's charges don't correspond with yours at all, Mr. Koerner, in payment of attorneys' fees after November 8th, 1895. You credit by cash $3,600; he credits with collection of $4,190.

Q. I don't remember that? At all events, you will admit, Mr. Thomas, that Mr. Leathe defended against these claims by you from the first?

A. As he does now, and I stated as he did against every other claim, connected with me, anything connected with me. The Rice claim for this account; Rice had to sue him and he took an appeal on that and employed Mr. Stephens.

Q. What Rice?

A. Wm. A. Rice.

Q. I don't remember of any suit by Rice?

A. He sued him and he took an appeal; sued him before a Justice

of the Peace, a very small bill, a few dollars, sued him for $29 and something.

Q. Have you got there Mr. Holmes' bill of particulars?

A. Yes, sir, that is here too. Of course I was not present at that time and did not go to see him about the arbitration case; I tried in every way I could through others parties to let us take hold but Mr. Leathe refused to do it.

Q. What did you do in that regard?

A. I got Mr. Taylor to go down and tell him we were ready and willing and wanted to help him.

Q. In what way?

A. By going down and going into the affairs and looking it up and seeing what charges ought to be paid and giving evidence what charges ought to be paid for those services over in Illinois.

Q. You told him that?

A. I did through Mr. Taylor.

Q. Then you don't know what Mr. Taylor said to him; you knew that Mr. Leathe employed counsel to defend the companies in this arbitration case?

1022 A. I suppose he did.

Q. You know he had Judge Lubke?

A. I see by his statement here, I suppose he did; I mean to say that that is a matter of fees; I mean to say that to the best of my knowledge he did, of course; I see charges here for Judge Lubke in the arbitration case; I presume he employed him. But the difficulty was, Mr. Koerner, in that that submitting to arbitration in Missouri at St. Louis affairs that were altogether foreign affairs, that the rate of charges is entirely different by different attorneys; that was the difficulty; that is where Mr. Leathe got imposed on.

Q. I don't consider it so?

A. The rate of charges over there is entirely different from what it is over here in St. Louis. He never advised with any of us about this arbitration; if he had advised with me I should certainly have shown him it was not a proper thing to do.

Q. You think it would not be more simple to adjust the matter by arbitration than by the test of the Courts?

A. Not in matters where I think it would have been for their services over there where the rates of fees are different; if you submit to the attorneys over here they are apt to look at it from the view attorneys fix here for their services.

Q. Don't you know what the attorneys who fix the rates over in Missouri and in Illinois are attorneys well known here?

A. I know that Given Cambell was one of them, as I understood.

Q. It was an arbitration?

A. I wasn't a witness I don't know anything about it; those who are well acquainted with the facts in the case were not called upon to testify about it; I know I wasn't called on, and I know that my brother wasn't called in, the two attorneys that had ½ the suits and we had knowledge of the litigation.

1023 Q. Well, what I mean to say is you probably know that Mr. Turner and Mr. Merrills and probably some other attorneys were witnesses in that case?

A. From others I know they were called upon, of course.

Q. Now, Mr. Holmes' bill, which you have spoken of, will you point out what you consider in that bill is personal to Mr. Leathe?

A. Those cases that I have mentioned that he had a fee charged for, in those cases that I have mentioned, and those that he has a fee charged; I don't know that he has a fee charged in every one of them; those he has a fee charged. He has for one in the Moss Tie Company case; I presume that is different from your statement; I didn't notice it on your statement. The Simms case the same way; that I didn't notice on your statement. Services in that case would be proper, a proper charge; that is to say a proper charge to be made by whoever attended to that case. The question of the Western Coal & Tow Company against the Crown Coal & Tow Company in the St. Louis Circuit Court, I don't know any such case as that.

Q. That is what you call the Bogy case?

A. Then the Bogy case he testified to $6000, where the amount is only $5500, for consultation and advice. These cases are all similar except the 2 or 3 I have mentioned of yours; in them the other business was all yours in St. Clair County that was the county Railroad case, county condemnation case; Holmes had nothing to do with that.

Q. No, he had not?

A. But Mr. Leathe was, it was due to his conduct; Holmes assisted in defending that.

Q. Your idea is that in the cases which you now think that he ought not to have defended, that he personally chargeable with the results of such litigation and lawyers' fees, and not the companies?

A. I don't think he ought not to defend; that is his own
1024 business; I know nothing about that, But I say the cases resulted from his own conduct that were brought by Rice, and are not chargeable to the company. Whether he defended them or not that is for him to say.

Q. You take the incidents of this litigation,—in the first place I want to ask you whether you have on the paper here which you mentioned, litigation of those companies, all the cases that were brought against Mr. Leathe or the Company in St. Clair County?

A. All that I can remember, all excepting one; that was the Rice case.

Q. The one you spoke of just now, that is the arbitration case; do you mean the paper which has been in evidence?

A. Yes, sir.

Q. Do you remember that in 1895, early in '94, perhaps Holmes, Taylor and Adams jointly or separately brought suits against Mr. Leathe?

A. Yes, sir.

Q. What became of that litigation?

A. They were dismissed; I had no connection with them; they were brought by Taylor and Adams against my advice, and I persuaded them to dismiss it.

Q. Against your advice against Mr. Leathe?

A. I tried to get a settlement; I wanted to settle and I told them not to bring these suits, but to let us make every effort to get a settlement before getting into litigation, that we ought not to bring these suits.

Q. They did bring the suits?

A. I don't really know whether they brought the suits or not; at any rate they were dismissed if they were brought.

Q. They were lately dismissed; they were pending a term of Court, weren't they?

A. No, I think not, because Mr. Knispel sued Mr. Adams;
1025 I don't believe they were brought at all; that is my recollection of them, my recollection about it is that they consulted with Mr. Knispel with Mr. Knispel or Mr. Turner, and that they prepared the papers, and I think that Mr. Knispel had charge of it; my recollection is they were not brought; but remind me of something in them.

Q. Well, if they were brought, I think it was merely because they had no substantial foundation?

A. No, indeed, for they were dismissed because I wanted them dismissed, because I wanted the gentlemen to try and get a settlement, to get Mr. Leathe to arrange these matters without litigation, and wrote him letters.

Q. Well, you were represented that time in all of the suits?

A. No, they insisted on bringing suit and I could not dissuade them from it at that time, and then afterwards I did dissuade them. Whether they brought them or not I don't know; they employed no attorneys to bring them that I know of.

Q. The records will show; don't you know, Mr. Thomas that you gave the opinion to the parties on which the proceedings were drawn?

A. I was with them; not to Mr. Turner but to Mr. Knispel, because they insisted that they were going to bring suits. I could not dissuade but I just friendly called his attention to it and succeeded in dissuading them from bringing suit.

Q. Now although you tried to dissuade them, you didn't succeed apparently?

A. I don't think they brought them; I don't know them well enough, those cases.

Q. Whatever they were, then, you gave him your counsel and information upon which he brought them?

A. All three of them; we all were there and talked the matters over; I am not cognizant with the facts, all of them here of course; I was not any more cognizant of the facts than these gentlemen were,
but there was some, there was some more time before bring-
1026 ing suit, that is all, and I thought we better try to explain matters; then Mr. Knispel had me bring in these matters; some of them knew a great deal more about the facts and things than myself.

Q. Do you remember the terms the suits were brought?

A. I don't think they brought those at all.

Q. You don't think they brought any?

A. No, I brought suits myself.

Q. When?

A. At the September term.
Q. In 1893?
A. Yes, sir.
Q. You don't think they brought any?
A. I don't think so; that is my recollection.
Q. In J-nuary 1894, they brought suits?
A. My recollection is they didn't bring the suits at all.
Q. Well, we can look at that?
A. Then at that time, about this time, the first suits brought I think were brought by me.
Q. There was a suit pending between Mr. Leathe and the First National Bank of Belleville; do you remember about that?
A. I know all about it.
Q. Well, whatever the claims the bank had there were claims against you personally, weren't they, your private debts?
A. Yes, sir, my private debts; I borrowed money from the bank and gave them a note upon collateral security.
Q. Forming part of what you claim is your investment in this enterprise?
A. Certainly; if I don't get the money out, if I have property of my wife that I got this money borrowed on *on* the note, all my credit would go.
Q. That amounted to finally when it was paid to something like $7000?
1027 A. No, a little over $5000.
Q. $7000, isn't it?
A. No, a little over $5000, it is near it.
Q. Judge Geary paid that amount finally, didn't he?
A. I could not tell you sir, I don't know anything about it.
Q. You know you didn't pay it?
A. I didn't pay it.
Q. Don't you know that Mr. Geary paid it?
A. How could I tell the amount of money due us, when it was paid or anything else; if it was paid I know I didn't pay it. I don't want to testify here, but I can tell you a great many things if you want me to.
Q. You know that Mr. Geary did pay it?
A. I don't know it to be a fact.
Q. There are some things you know without being there?
A. I don't like to say I know them when I don't know. I can tell you a great many things; I don't testify he did pay it, I don't testify to that.
Q. Mr. Leathe paid the mortgage on your property, about $4400?
A. Only paid a portion.
Q. For those notes on your property?
A. The story of that I will tell you. Mr. Leathe through you commenced to revive a judgment; you got people to sue in Belleville to get judgment. Mr. Chipley had sued me on this note I had given to Chipley; on the judgment you proceeded to sell my stuff on the face value. The judgment had nothing to do with the company, nor in having Mr. Leathe pay them in any way; I had taken up a great many, and they levied on my stock; in order to save

myself I had to get my brother to pay off those debts and you were against me. I got him to pay it to save it; I transferred him the stock, all the stock I had that went there.

Q. What I was inquiring about was that this suit was brought for this stock that you owned that you say you transferred to your brother Charles, and there was $50000 paid by Mr. Gary?

A. I don't know except upon information.

1028 Q. Well, you are willing to admit that?

A. I am willing to admit that my brother sold the stock, that he sold it without my consent and against my wishes; I don't know if $50000 was the amount of that judgment; and I receipted to Mr. Geary for the amount of those bonds, which made $44000 and some odd dollars.

Q. Mr. Geary paid the judgment?

A. Mr. Geary paid the judgment; on that my brother sold it himself without my consent and against my opposition.

Q. Well, nevertheless, Mr. Thomas, you got the benefit of that, did you not?

A. After he came back, after he took the amount, did it himself without any agreement between us, no agreement regarding it, when he came back, I paid him his money; he took out what was coming to him by reason of his stock that he had, $25000 in the railroad, 2/5 in the coal which was included in this sale, and then he took out what he had advanced and paid it to me, paid me the balance claimed by my wife. When I had tran-ferred it to him, when you were claim-ng the stock, I transferred it as though it were mine, taking what he had paid for me out and he gave me the balance. I knew nothing of the sale that Mr. Leathe made, knew nothing of what he had received. I was a director and had invested in this company, and under my idea I was to receive my money; I was not consulted from July, 1893, about this matter except once; then I was consulted by Mr. Taylor, not by Mr. Leathe.

Q. Well, now, then your stock or your interest represented by your stock that is to say footed up $50000 which you had given obligations for; that left only the sum of $50000?

A. No, not that amount, Mr. Koerner.

Q. Did you originally turn it over to Charles?

A. No, I did not turn anything over to him, nothing in the world.

1029 Q. At that time you don't think you had the benefit of these returns?

A. It never did benefit me; we were not defeated; I know the reason why Mr. Leathe tried to get this other charter, to get that charter; I had put up $25000, but Mr. Leathe never surrendered any of his to go on with the enterprise. In order to get him to go on I surrendered $25 to Charles; that must have been after I transferred it; that I think left 770 shares.

Q. Exactly; you surrendered all those shares and took for that $50000?

A. No, that I presume included that judgment of $50,000.

Q. Certainly that went to your benefit?

A. No.

Q. It paid your debt?

A. It didn't pay anything; I had nothing; nothing could have been collected off of me; it was a debt Mr. Leathe had made; I never was responsible for it. And the same way Mr. Leathe had violated another one of his agreements and brought me into trouble.

Q. There is no use in talking about that?

A. And recovered judgment against me, or some more of them; you advised him to that, too, I believe.

Q. We won't discuss that now.

Recess was taken at this point until 2 o'clock.

After recess 2 P. M. The cross examination of Mr. Thomas was resumed as follows:

Mr. KOERNER:

Q. Mr. Thomas, the first litigation that was had between Mr. Leathe and some of the other directors was as you have stated a bill filed to enjoin some contemplated action by the board of directors with one Waddick, as a director, wasn't it; you say that case was heard at chambers?

1030 A. Yes, sir, that is to say it was a demurrer to the bill; we didn't deny the statements in it.

Q. You remember perhaps that the judge suggested that the bill was not full enough, on some matters and that I proposed to amend it?

A. I remember that *that* he filed an opinion; that you proposed to file an amen-ed bill and you requested it in either case.

Q. I proposed to amend it and Mr. Waddick under your direction I presume thereupon voluntarily withdrew?

A. No, not then; you were then going to take an appeal bond to take the injunction before another judge; one of the judges holding Court at that time, and you were going down there and gave notice to go down and at my suggestion, Mr. Koerner, we agreed that we had nothing to do with it, and we did not care whether Mr. Waddick was going out; Mr. Leathe wanted him to go.

Q. Very well, then, in that way the object was attained?

A. By your consent, and after this litigation; the litigation was wholly unnecessary.

Q. And why did you oppose it then?

A. Simply because we had to defend ourselves against getting an injunction against us.

Q. Not necessarily, if you were willing to do what was *was* wanted to be done?

A. We did not want an injunction, and we had to defend it sometime or other, so we just defended it right there. When we showed him he could not get an injunction he had agreed to do what was all right, and we would have done it before.

Q. Then immediately you had the old East St. Louis Ry. give you a note for $50000 and some odd dollars, did you, in August?

A. In August, yes, sir, after that.

Q. Well, you- efforts were all right together?

A. The Belleville & St. Louis Ry. directors—Mr. Leathe was not a director of the company in any way and had nothing to do
1031 with it—we met together, and Mr. Adams and myself wanted our account settled; so we soon explained what it was and we settled upon it.

Q. You and Adams controlled and consulted all together, did you not?

A. I controlled it.

Q. You controlled it, and you directed the size of the notes that were to be given?

A. No, sir.

Q. You could determine?

A. I could have done so; I made up my account and some accounts that I transferred to Mr. Leathe prior to that time, to Mr. Leathe separately; the corrections reduced it some one or two thousand dollars; Mr. Adams' account was money advanced; we had presented the account to Mr. Leathe in January.

Q. You brought suit on that note within a few days after it was made?

A. Sued at the September term of Court?

Q. September term of Court?

A. Yes, sir.

Q. At the September term, Mr. Thomas, Adams and Taylor both brought suits?

A. I think not, Mr. Koerner.

Q. Was that to the January term?

A. My recollection is he did not bring suit at all.

Q. You are not positive about that?

A. I am not positive; but my recollection is they never brought suits at that time at all.

Q. You don't think they did; I will look at the record?

A. I might possibly be mistaken; I don't think they did.

Q. Then you sued Mr. Leathe in the litigation made here?

A. No, I first wrote this letter to him and tried to get him to settle my wife's affairs; that is all; I wanted in the first place. This whole thing was started to get the Leathe matter settled on my wife's ac-
count and her family; and I endeavored in very way to
1032 explain that to Mr. Leathe and urge him that that thing should be settled. I made demand on him for the bonds so as to get the thing settled; he would not agree to anything; I wanted to get them in and said I am going to get them back; I could not get them out of him, I wrote him to make a settlement and could not get them out of him; then I brought suit.

Q. There was not much time?

A. Very little time; I wrote him in a letter I could not give him but a very few days.

Q. You also brought suit to the same term which has been called a vendor's lien in behalf of your wife?

A. Me and my wife simply for the purchase money of this land

that he had agreed to put the $25000 of bonds in the bank for by the 27th of August.

Q. At the same term of Court Boling, one Boling and Edward L. Thomas filed a bill against the Belleville City Ry. Company?

A. No.

Q. For a lien on the road?

A. No, Boling filed the bill himself against my advice.

Q. And you were a party to it?

A. Not then; I became a party after it went into Court; then we dismissed it.

Q. That was also brought to the September Term of Court?

A. Yes, sir, and we dismissed it.

Q. Now, then, when the bill was filed by the Belleville City Ry. Company and Mr. Leathe or Mr. Chipley, I don't remember?

A. No, it was not Chipley.

Q. To enjoin the prosecution of that suit?

A. I sued the Belleville & St. Louis Ry. Company, and the attorneys notified Mr. Leathe that he could defend it, they did so notify him and he came in and defended it, and then filed
1033 this bill in his own name and the names of the two railway companies to enjoin me, though as a matter of course the two other companies were not proper parties; but he went on and filed it.

Q. Now, pending the hearing of that injunction case, is it not true that both the Boling case and this vendor's lien of Thomas were dismissed.

A. No, you are mistaken about that; I commenced another suit for a vendor's lien with the Belleville & St. Louis Ry. Company, against the Belleville City Ry. Company; that was the one that was dismissed.

Q. There was another only then you filed?

A. That was another one; it is all there that was dismissed.

Q. That was dismissed pending this litigation?

A. Because that question could be determined in the injunction case that he brought.

Q. Well, I just want the fact; it was dismissed, the Boling suit was dismissed?

A. The Boling suit, they had no right to bring the suit; Mr. Turner did not understand it, and as soon a he understood it he dismissed it.

Q. Then soon after you began suit in the County Court on these Bank note and Shedd cases?

A. That was some time after that; that was after this case was heard, this injunction case, and the case that I brought against the Belleville & St. Louis were heard together, and upon the hearing the injunction was denied and judgment ordered. Then I attempted to get a settlement of the affairs after the suggestion Mr. Holmes made to me that Mr. Leathe wanted to settle. I then started in with Holmes to settle, and according to his letter you will find that he concluded that Mr. Leathe was so determined not to settle anything about the railroad he could not do anything with him about the railroad

branch, and he could not do anything about it. I made
1034 efforts in this case trying to arrange it so as not to have any further litigation and be fair to him and fair to everybody; then I could not do anything with him; in the letter to Holmes I endeavored to make an arrangement of the coal matters so as to get the coal land of my wife's settled.

Q. Well, that was done?

A. That was done in a manner.

Q. Then you brought suit, these suits you spoke of this morning?

A. *I* He then brought these suits against *you* me to prevent *you* me getting my bonds after giving me his word of honor in your presence that I should have the bonds.

Q. After you brought the Shedd suit?

A. After I brought the Shedd suit.

Q. Anyhow, when did you bring those Shedd suits?

A. I brought them in the spring of 1894.

Q. That is what I thought?

A. That is in the County Court the July term, 1894. He brought these suits against me the very next day. After the first day of March or 11th day of March he brought them, on the 11th day of March, in St. Louis here.

Q. The suits were pending?

A. He att-ched my bonds the very next day in St. Louis and he agreed not to attache them at all, he gave me his word of honor.

Q. I am not asking you about that. Now, Mr. Thomas, after November, 1895, there was a good deal of litigation filed, was there not?

A. At the time of the settlement of the sale there were cases pending against Mr. Leathe and the Company; one against the Company the Crown Coal & Tow Company and one against Mr. Leathe. That I think was all of the litigation which was pending except the Moss Tie Company case in St. Louis. At that time the case pending was my case against him; that was removed to the United States Court and was then pending in the United States Court.

1035 Q. And soon after this you made many other cases?

A. Then among other cases was the accounting case I commenced before that for the accounting against the old Crown & Tow Company; that was pending after that. There were no cases brought excepting by Taylor and Adams and Holmes; Mr. Holmes advised all of that.

Q. Well, there were two cases brought by Mrs. Adams previously, one which is now pending here, were there not?

A. Brought over here in St. Louis, as I understand.

Q. In the Circuit Court?

A. Yes, sir.

Q. And the hearing was had before Judge Rombauer as Referee?

A. I understand so and I have seen the record.

Q. You were a witness in the case?

A. I was a witness in the case; they took my evidence over in Belleville I was not on the stand in the case; that is to say I did not appear. That was on the $11000 note.

Q. That is one and there was another case?

A. I wasn't a witness in that case, yes, never have been; I have never been in the case; that was all after the sale.

Q. Mr. Leathe, you remember, defended the case on the theory that this was a contribution of the Adamses to the capital stock of the Crown Coal & Tow Company?

A. I can't answer what theory you got him to put in; you provided for a great many theories for him that never took hold.

Q. I never knew about these matters except what I learned?

A. You advised him, Mr. Koerner, all the time.

Q. Then his position was sustained by the Referee, was it not?

A. I could not tell you what the situation was; I think not; my recollection is the Referee did not cover it; he decided that the statute in Missouri did not permit that kind of an amendment arrangement to be made. I read his opinion; that is the opinion if you want me to tell you.

1036 Q. Then the result was the same?

A. On a technicality, yes, sir.

Q. You consider that a technicality?

A. Of course it is, because it was on the petition, the petition not covering the evidence, and that he could not amend his petition. The Court held that *that* the amendment he offered was not permitted by the Statute of Missouri. I read his opinion, that is the Referee Judge Rombauer.

Q. And that case was then recommenced and is now before Judge Dillon?

A. That case I don't know whether it was recommenced or not, although I do by information from *of* Mr. Holmes.

Q. And the other accounting case of Adams is also referred to Judge Dillon?

A. I don't know that at all. I didn't know that at all. I know they are pending.

Q. You know there were sessions before Judge Rombauer?

A. I don't know that at all. I know he has paid on that $11000 according to his statement 2/3's of it now; that is all I know. It seems he don't dispute it, and he puts in the other 1/3 as a contingent claim.

Q. Now this case of Edward L. Thomas against the Coal Company Gundlach against the Coal Company, and this of Mary O. Thomas; was that prosecuted to judgment?

A. Prosecuted to judgment.

Q. Was that before or after the sale of the property?

A. Before.

Q. Before?

A. The levy was made, and then Mr. Leathe through you and your assistance purchased the judgment, and in the law case and the decree in the chancery case of Gundlach, Leathe took an assignment in his own name.

1037 Q. That was afterwards released to you?

A. It was afterwards released to my wife, yes, sir, who is the owner of the land.

Q. The Coal Company against Simms; you say that was a proper litigation?

A. I suppose it was from his statement; I have no doubt but what it was due, the claim against one of the steamers that he has on his account and not collected, and he has charged himself with receiving it.

Q. Dredging Company against Coal Company?

A. That was the case against the old Crown Coal Company; there were three parties responsible for that.

Q. You never did anything about that?

A. He has never asked me to at all, or tell us what they were, nor anything. I would be glad to give him credit and will if he will tell me what it is; I presume Mr. Adams will do the same, and Mr. Taylor the same. It is unquestionably a debt of Adams, Thomas and Taylor.

Q. What suit is that which you have marked Bogy against the Coal Company?

A. That was one I presume I have here of B. Bogy against the Coal Company. I think it was for one share of stock; that was my recollection of it although I am only speaking now from information, as I say.

Q. Now, Mr. Thomas, you brought a bill for an accounting against the Crown Coal & Tow Company in St. Clair County did you not?

A. Yes, sir, that was pending; that is the suit which was pending when the sale was had.

Q. That was collected?

A. I filed it after the sale; I filed the supplemental bill; that was rejected. I tried them to get him to settle this case, but he
1038 would not do it, so I had to go on.

Q. Had to go through all the Courts?

A. I did not have to; I thought he ought to submit when the Master heard the case, but he didn't seem to. He went to the Appellate Court, from that to the Supreme Court, and filed a petition for re-hearing in the Supreme Court.

Q. There was an injunction obtained against your collecting that
Allen
judgment before Judge Adams of the United States Court?

A. Yes, sir, without notice, and contrary to all the rules in the
Allen
country, through your influence over Judge Adams: I will state that.

Allen

Q. You have great confidence in Judge Adams?

A. There is no question about that; your influence over Judge Allen.

Q. And that case went to the Court of Appeals?

A. No, sir, we moved first to dissolve the injunction before one of the Circuit Court Judges and the Circuit Court Judge dissolved it.

Q. Then it went to the Court of Appeals?

A. Then you appealed it to the Court of Appeals and the Court of Appeals affirmed the order dissolving the injunction.

Q. It was heard at Milwaukee?

A. I really don't know where it was heard.

Q. There were several hearings in relation to the matter at Chicago?

A. You had tried to enjoin that before Judge Schaefer.

Q. In other words, Mr. Leathe, if he was as he says confident that was a wrong debt, he did all in his power to prevent the Company from being compelled to pay this claim?

A. He had it within his power to prevent the Company from paying it, but not in good faith, and all his actions was the want of good faith in all of this litigation.

Q. That is a conclusion merely, and not a question which the witness ought to state?

1039 A. Well, that is a fact.

Q. The witness ought to state, as I understand it, the facts. Now, after that similar cases were brought by Adams & Taylor, similar to this case of yours?

A. Holmes and Adams and Taylor and myself.

Q. Well, if you will just answer the question?

A. Mr. Holmes advised those cases, all that were brought which were pending and brought to the Appellate Court by Mr. Leathe.

Q. Didn't you advise the bringing of those cases?

A. No, sir, not at first; Mr. Holmes was the one before that; Mr. Holmes advised the bringing of the suits, said he could not do anything until the suits were brought.

Q. You brought them yourself, didn't you?

A. No.

Q. Well, you are interested in those suits?

A. I am. Thomas Webb was employed.

Q. You are interested in the result of those suits?

A. I am interested in the result of all those cases, all those three cases.

Q. All these three cases against Mr. Leathe and with Taylor and Adams?

A. I am interested in the event *of* by the agreement with Taylor and Adams on the settlement of our affairs and the matter growing out of the old Crown Coal and Tow Company.

Q. In other words whatever can be recovered, if anything by these parties you are to get a share of it?

A. Yes, sir.

Q. The same is true of the law suits commenced by you or commenced in the name of Adams and Taylor in assumpsit against the Crown Coal & Tow Company, Called the Harmony Mine suit?

A. The same is true as to that.

Q. You were interested, became interested for the payment

1040 on behalf of your wife?

A. I did not become interested in the first instance at all, but became interested in January or February, *1896*, 1898 by reason

of the settlement of the affairs with the old Crown Coal & Tow Company between Adams, Taylor and Thomas.

Q. When the case was tried you were interested?

A. I was interested when the case was tried.

Q. That was for a mine which Adams and Taylor turned over to the Crown Coal & Tow Company?

A. Yes, sir, that was for a mine.

Q. And Mr. Leathe contended that it was part of their contribution to the capital stock and not to be paid for by the Company?

A. That is what his contention was.

Q. Mr. Leathe fought that suit as he did the others?

A. No, I think not; I don't think he went to the Supreme Court on that.

Q. Then these cases, these Sheriff's suits to recover on bonds, weren't they brought for the purpose of recovering money?

A. The one I brought for Gundlach was for the purpose of getting the value of the retention of property during the time; that is all I brought it for, claiming no *pecuniary* punitive damages; I took what Samuel Leathe swore the rental value of the property was.

Q. That was another one, on an attachment bond?

A. There was a suit on a- attachment bond that Mr. Leathe swore to also tried to get him for swearing falsely and could not do it, could recover only nominal damages on the decision; we could not recover against the surety for his wrongfully swearing.

Q. Mr. Thomas, why couldn't you recover for Mr. Leathe?

A. For wrongfully swearing out an attachment, simply because we had to come over here to *swear* sue, there — plenty of time for that; Mr. Adams was doing that.

Q. You took a non-suit in that case, I believe?

A. Simply because the Court held we had only nominal damages against the *Sheriff* security.

1041 Q. I mean you could have brought that, as far as that is concerned?

A. Of course we could; such a false oath as that is ridiculous.

Q. Now, Mr. Thomas, your position is that the contract of January 24, 1893, is not in force, I believe?

A. That has always been my opinion.

Q. And is now?

A. And is now.

Q. Then you don't claim to have any interest in the accounting brought by this plaintiff.

A. No, the only reason I want the account in my case is to be on the safe side as every lawyer ought to; the reason I want the accounting in my case is to be on the safe side in my case, whatever view the Court might take of it to be on the safe side. That is in my case; in this case I have no interest; but if this evidence is to be used both ways, that is the reason I make that statement.

Q. Let me understand that; you are repudiating the contract of 1893, and at the same time trying to recover under it in case an accounting is thought proper?

A. No, sir; under our practise we are allowed to file a great many

pleas; this does not apply to this case at all. I have filed a number of pleas and set offs, some of them claiming under an adjudication, some claiming under an agreement if that claim was made, and some claiming under this contract as a modification of March 25th, 1893; and as a matter of course evidence is to be taken upon all those pleas.

Q. Well, I understand.

A. And I am taking all the evidence on those pleas.

Q. I understand that you can plead different things; but if they are inconsistent, one or the other must be proved?

A. It can make very little difference in my case which one
1042 it is; there is very little difference to it. I have filed all the pleas; and if there is a conflict of evidence, as a matter of course if the Court should say there ought to be an accounting, and I have not presented my side of it, I am at a loss to see how I can *lose* win the case; If the Court should decide the contract of January 24th is in force, then I want to be prepared on that branch of it; that is the reason I have been going into this evidence.

Mr. KOERNER: I think I am through with Mr. Thomas; but I want to say this, I may have to ask him to go on the stand again and ask him a few questions on this matter, some things may occur to me which I ought to ask him; I can not think of anything just now.

Redirect examination,

By Mr. SMITH:

Q. I want to ask you, Mr. Thomas, to make clear a matter before the Court.

Mr. Thomas, as I understand it, your position with respect to the $118,500 worth of Crown Coal & Tow bonds is that Mr. Leathe took is this, that under a resolution which has been or will hereafter be introduced, all those bonds were taken by Mr. Leathe at par in discharge of certain indebtedness and obligations amounting to within a few dollars of that sum at the time they were taken in March 1894?

A. Yes, sir.

Q. Now, picking out for the furthermore information of us all one item, as for instance the Adams item of $9900 and odd dollars, being 2/3's of the payment made by Mr. Leathe on account of the $11000 note, I understand you reject in round figures $1400 on the theory that as it was a debt that he owed and he had money to pay
it with on the 8th of November, 1895, and that if he chose not
1043 to pay it for one or two years after that, the interest accruing subsequently to that you claim should be deducted on the account?

A. I claim it should not be charged in the account.

Q. Now, have you anywhere in the account that he has filed, assuming that he got this $500,000 in cash as I believe is conceded on the pleadings on the 8th of November, 1895,—have you found anywhere in his account one penny of interest that he has allowed on account of money that he received?

A. No.

Mr. SMITH: We want to introduce certified copies of the awards of the arbitrators, awards and bills of particulars in the cases of John M. Holmes *vs.* Samuel Leathe, and Gustavus H. Koerner *vs.* Samuel Leathe, in the Circuit Court, City of St. Louis, and which will be marked, "Plaintiff's Exhibit, August 23, 1900, B." and "Plaintiff's Exhibit, August 23, 1900, C."

These Exhibits are as follows:

1044 PLAINTIFF'S EXHIBIT. Aug. 23, 1900. "B."

Before Arbitrators, Sam'l N. Holloday, Given Campbell, and Jho. J. O'Brien.

GUSTAVUS A. KOERNER, Plaintiff,
vs.
SAMUEL H. LEATHE, Defendant.

Whereas matters in controversy between Gustavus A. Koerner and Samuel H. Leathe, were, by them submitted to the undersigned Sam N. Holliday, Given Campbell and John J. O'Brien, as by their submission in writing, executed by said parties, respectively, and bearing date the 29th day of February, 1896:

Now, therefore, we, the arbitrators mentioned in said submission, having been first duly sworn, on April the 14th, 1896, according to law, before an officer duly authorized to administer oaths, faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their understanding, which said submission in writing and oaths duly subscribed by us, are herewith filed and returned with this award; and we, the said arbitrators did appoint a time and place for the hearing of said arbitration, and notified the parties thereof, the time appointed being April 18th, 1896, at 2 p. m. at the office of Samuel N. Holliday, at 305 Olive Street, in the City of St. Louis, Mo., and we, the said arbitrators and said parties did meet for said hearing at said time and place, and adjourned from time to time, as was necessary, with the consent of all parties; and we, said arbitrators, having heard the proofs and allegations of the parties, and having examined the matters in controversy by them submitted, do make this award in
1045 writing that is to say, the said Samuel H. Leathe is indebted to, and shall pay to the said Gustavus A. Koerner the sum of Ten Thousand and eighty four and 40/100 dollars, and said payment shall be in full discharge and satisfaction of and for moneys claimed to be due said Koerner for legal services claimed to have been rendered by said Koerner to said Samuel H. Leathe, and to the Crown Coal & Tow Company, and the St. Louis, Belleville and Southern Railway Company, between the first day of August, A. D. 1893, and until the 9th day of November 1895.

In testimony whereof we have hereunto set our hands this 21st day of May 1896.

SAM'L N. HOLLIDAY.
GIVEN CAMPBELL.
JOHN J. O'BRIEN.

Attested by:
P. F. KELCHER.

Before S. N. Holliday, Given Campbell, and John J. O'Brien, Arbitrators.

G. A. KOERNER
vs.
SAMUEL H. LEATHE.

Plaintiff's Bill of Particulars.

Plaintiff states by way of a bill of particulars, that the services for which he is suing in this cause, and for which he desires a judgment by the arbitrators, consists of legal services rendered by him as a lawyer, to the St. Louis, Belleville & Southern Railroad Co., to the Crown Coal & Tow Company, and to Samuel H. Leathe, in the following matters, for which he charges the following prices:

1046 Condemnation Cases in County Court of St. Clair County.

In case against St. Louis, Alton & Terre Haute Railroad Company (Cairo Short Line), the St. Louis Cotton Compress Company, the Wiggins Ferry Company, and the East St. Louis Jockey Club	$1500.00
Case against East St. Louis & Carondelet Railroad (*Conlogue*)	500.00
Case against Adam Emege	100.00
Case against John Maule *et al.*	100.00
Case against St. Louis, Alton, and Terre Haute Railroad Company and Tudor Iron Works	1500.00

In Supreme Court of Illinois.

Case against East St. Louis & Carondelet Railway Company	500.00

In Supreme Court of Illinois.

Case against St. Louis, Alton & Terre Haute Railroad Company and Tudor Iron Works	500.00
Services in matter of Short Line Crossing, Belleville	250.00
Services in matter of preparing and having passed ordinances in City of Belleville	500.00
Case before Justice of the Peace, and taking certiorari in case of P. M. Gundlach (a forcible detainer)	100.00
Preparing bill in chancery to enjoin Waddock from acting as director, preparing affidavits and hearing same before Judge Wilderman	250.00

To services in suit at law in the Circuit Court of St. Clair County, Illinois, brought by Edward L.
1047 Thomas against Belleville & St. Louis Railway Co.

Bill in chancery to enjoin such suit, including therein defense of vendor's lien case brought by Belleville & St. Louis Railway Company against Belleville City Railway Company, and also defense of lien case brought by Elpheus Boling against Belleville City Railway Company 2000.00

Suit in Circuit Court of St. Clair County.

First National Bank of Belleville against Leathe..... 500.00

Three suits in County Court of St. Clair County to wit: National Bank Note Company of New York against S. H. Leathe, Shed against S. H. Leathe, and Shaw and Ferguson against S. H. Leathe..... 100.00

Trial of these cases in Circuit Court of St. Clair County, where they were removed by change of venue..... 1500.00

Case of Belleville & St. Louis Railway for use of Edward L. Thomas against S. H. Leathe, commenced in the Circuit Court of St. Clair County and removed at the instance of defendant to U. S. Circuit Court, in the Southern District of Illinois..... 3000.00

To services for *to* Mr. Leathe October and November 1895, at St. Louis, by perfecting sale to Judge Gary, agent for purchasers..... 500.00

1048 Suits in Circuit Court of St. Clair County, against L. M. Chipley for Crown Coal & Tow Company 300.00

Case of Yock Coal & Mining Company against C. C. & T. Company in Circuit Court of St. Clair County, and in Appellate Court, Fourth District of Illinois..... 200.00

Case in mandamus by Edward L. Thomas against C. C. & T. Company in Circuit Court, in Appellate Court and in Supreme Court..... 500.00

1049 Litigation and advice in regard to Thomas farm including suits of vendor's lien brought by Mary O. Thomas suits in assumpsit brought by Phillip M. Gundlach and Anthony and Mary O. Thomas, foreclosure suits brought by Phillip M. Gundlach and Anthony Pfeiffer, and Alexander Pfeiffer..... 1000.00

	To consultations and advice during the period covered by this bill, to the Crown Coal & Tow Company to the St. Louis, Belleville and Southern R. R. Company and to the officers and agents of said two companies, from August 1st, 1893, to November 9th, 1895. Said consultations and advice being from day to day during said period, and covering all subjects arising in the course of the business of said companies, and also covering all questions arising from the relations of the different parties in said companies to each other....	5000.00
	Services in the matter of bonding said two companies and of drawing and preparing the various contracts and agreements arising out of the business of the said two companies, during said period.....	
	Services in attending the meetings of the said two companies, and of drawing and preparing resolutions, &c., to be offered thereat.....	
	Personal expenses	500.00
	Total	$20900.00
1050	Credit by cash.....	3600.00
	Balance	$17300.00

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, do hereby certify that the above and foregoing is a true, full and complete copy of the Arbitrators' award and Bill of Particulars, filed in my office on the 24th day of June, 1896, being number 3984 of the causes of said Court, wherein Gustavus A. Koerner, is plaintiff, and Samuel H. Leathe, is the defendant, as fully as the same remain on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Office in the City of St. Louis, this 28th day of December, A. D. 1898.

[SEAL.] THOS. B. RODGERS, *Clerk.*

Revenue stamp.

1051 PLAINTIFF'S EXHIBIT. Aug. 23rd, 1900. "C."

Before Arbitrators Sam'l N. Holliday, Given Campbell, and Jho. J. O'Brien.

JOHN M. HOLMES, Plaintiff,
vs.
SAM'L H. LEATHE, Def't.

Whereas matters in controversy between John M. Holmes and Sam'l H. Leathe were, by them submitted to the undersigned, Sam'l N. Holiday, Given Campbell and John J. O'Brien, as *by* their submission in writing, executed by said parties, respectively, and bearing date the 28th day of March, 1896;

Now, therefore, we, the arbitrators mentioned in said submission having been first duly sworn, on April 14th, 1896, according to law, before an officer duly authorized to administer oaths faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to the best of their understanding, which said submission in writing, and oaths duly subscribed by us, are herewith filed and returned with this award; and we, the said arbitrators, did appoint a time and place for the hearing of said arbitration, and notified the parties thereof, the time appointed being April 18th, 1896, at 2 P. M. at the office of Samuel N. Holliday, at 305 Olive Street, in the City of St. Louis, Mo., and we, the said arbitrators, and said parties did meet for said hearing at said time and place, and adjourn from time to time, as was necessary with the consent of all the parties; and we, said arbitrators, having heard the proofs and
1052 allegations of the parties, and having examined the matters in controversy by them submitted, *to* make this award in writing that is to say, the said Samuel H. Leathe is indebted to and shall pay to the said John M. Holmes the sum of Fifty-four hundred dollars, and said payment shall be in full discharge and satisfaction of and for moneys claimed to be due said Holmes for legal services claimed to have been rendered by said Holmes to said Samuel H. Leathe, and to the Crown Coal & Tow Company, and the St. Louis, Belleville & Southern Railway Company, between the first day of April, 1893, and the 9th day of November, 1895.

In testimony whereof we have hereunto set our hands this the 21st day of May, 1896.

SAM'L N. HOLLIDAY.
JOHN J. O'BRIEN.

Attested by
P. F. KELCHER.

Before S. N. Holliday, Given Campbell, and John J. O'Brien, the Arbitrators.

J. M. HOLMES
vs.
SAMUEL H. LEATHE.

Plaintiff's Bill of Particulars.

Plaintiff states by way of a bill of Particulars, that the services for which he is suing in this case and for which he desires a judgment by the arbitrators, consists of legal services, rendered by him as a lawyer, to the St. Louis, Belleville & Southern Railroad Company, to the Crown Coal & Tow Company, and to Samuel H. Leathe, in the following matters, for which he charges the following prices:

To services in suit at law in the Circuit Court of St. Clair County, Illinois, brought by Edward L. Thomas Against Belleville & St. Louis Railway Company, Bill in chancery to enjoin such suit, including therein defense of vendor's lien case brought by Belleville & St. Louis Railway Company against the Belle-	
1053 ville City Railway Company, and also a defense of lien case brought by Alpheus Boling against Belleville City Railway Company.....	$1,000 00
Suit in Circuit Court of St. Clair County, First National Bank of Belleville against S. H. Leathe.....	250 00
Three suits in County Court of St. Clair County, to-wit, National Bank Note Company of New York against S. H. Leathe; Shed *vs.* S. H. Leathe, and Shaw & Ferguson *vs.* S. H. Leathe.....	50 00
Trial of these cases in Circuit Court of St. Clair County, where they were removed by change of venue.....	750 00
Case of Belleville & St. Louis Railway Company for use of Edward L. Thomas against S. H. Leathe, commenced in the Circuit Court of St. Clair County and removed at the instance of the defendant to the U. S. Circuit Court in the Southern District of Illinois....	1,500 00
Litigation and advice in regard to Thomas farm, including suits of vendor's lien brought by Mary O. Thomas suits in assumpsit brought by Philip M. Gundlach, Anthony Pfeifer and Mary O. Thomas, foreclosure suits brought by Philip M. Gundlach, Anthony Pfiefer, and Alexander Pfiefer.....	500 00
Services in case of Moss Tie Company against Belleville City Railway Company, in St. Louis Circuit Court	150 00
Services in case of Crown Coal & Tow Company *vs.* Simms, in St. Louis Circuit Court.....	100 00

Services in Western Coal & Tow Company *vs.* Crown Coal & Tow Company, in St. Louis Circuit Court.....	100 00
Services in the matter of consultation and advice to the defendant, to the Crown Coal & Tow Company, to the St. Louis, Belleville & Southern R. R. Company, and to the officers and agents of said two companies, from May 1st, 1893, to November 9th, 1895. Said consultation and advice being from day to day during said period, and covering all subjects arising in the course of the business of said companies, and also covering all questions arising from the relations of the different parties in said companies to each other.....	6,000 00
Services in the matter of bonding said two companies, and of drawing and preparing the various contracts and agreements arising out of the business of the said two companies, during said period.....	
Services in attending the meetings of the said two companies, and of drawing and preparing resolutions, &c., to be offered thereat.....	
Total	$10,400 00
I desire to give credit for thirty months' retainer, $25.00 per month, from May 1st, 1893, to November 1st, 1895	750 00

1054

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, do hereby certify that the above and foregoing is a true, full and complete copy of the award of arbitrators and bill of particulars filed in my office on the 24th day of June, 1896, in the cause wherein John M. Holmes is the plaintiff and Samuel H. Leathe, is the defendant, being cause No. 3985 of the causes of said Court, as fully as the same remain on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Office in the City of Saint Louis, this 28th day of December, A. D. 1898.

[SEAL.] THOS. B. RODGERS, *Clerk.*

(Revenue Stamp.)

1055 EXHIBIT "B" TO TESTIMONY OF EDWARD L. THOMAS, Taken Before M. W. Weir, Referee, May 22, 1900.

Contract of Construction.

This agreement entered into this eleventh day of May A. D. 1889, by and between the Belleville and St. Louis Railway Company, party of the first part and Edward L. Thomas, party of the second part, witnesseth:

Clause (1st). That the party of the first part, for and in consideration of the agreements to be performed by the party of the second part as hereinafter set forth, agrees to issue and deliver to the party of the second part its First Mortgage Bonds, secured by mortgage on all of its property and franchises, in the sum of One Hundred and Fifty Thousand Dollars, in bonds of one Thousand Dollars each, bearing interest at six per cent., payable semi-annually, on the first days of January and July of each year and to be due and payable twenty years after date thereof.

Clause (2nd). That said issue of first mortgage bonds shall not exceed said bonds of $150,000.00 described in clause 1st hereof.

Clause (3d). That said party of the first part agrees to issue $49,500 of stock consisting of 495 shares of its Capital Stock, as subscribed by said party of the second part to him and in addition to said bonds, agrees to pay said party of the second part the sum of Fifty Thousand Dollars on completion of said portion of this contract by said party of the second part, and to accept his receipt upon said Fifty Thousand Dollars as payment for said stock so issued to the extent of the face value of said stock, and to pay him balance in cash.

1056 Clause (4). Said bonds and stocks are to be issued and delivered to said party of the second part prior to July 1st, 1889, and are to bear date of July 1st, 1889, first interest coupon of bonds to be payable Jan. 1st, 1890.

Clause (5). Said party of the second part shall have full power to use the name of the party of the first part to procure right of way, and all contracts made by said party of the second part shall be made in the name of the party of the first part and the officers thereof shall at the direction of said party of the second part, execute such contracts.

In consideration of the foregoing covenants, the party of the second part agrees on his part as follows:

Clause (6). That he will procure surveys to be made of a route for said railroad connecting with the East St. Louis Connecting Railway at East St. Louis and running thence southwestwardly to connect with the switch now built and known as the Crown Coal Switch on the Cairo Short Line Railroad and being a distance of 40762 feet, more or less.

Clause (7). That he will procure in the name of the Belleville & St. Louis Railway Company the right of way for the same and will proceed at once to grade the same, put ties upon the same, of good quality such as are ordinarily used, furnish all necessary steel rails of a weight of not less than 56 lbs. to the yard and lay said track using all necessary angle bars, bolts, spikes, switch-heads and everything necessary to construct a good substantial Railroad track, according to the ordinary methods of constructing Railroads.

Clause (8). That he will make all necessary contracts and procure in the name of the Bellleville & St. Louis Railway Company, One Hundred Dongola cars (Commonly called coal cars) with dump and, and of a capacity of twenty tons each, also one good substantial locomotive engine suitable for the work of hauling freight

1057 over said road, of a weight not exceeding Thirty-six tons, and not less than twenty-eight tons, as may hereafter be de-

termined, and also one caboose car, to be first class in every respect.

Clause (*8*). That he will complete said road by January 1st, 1891, and when completed and fully equipped as herein provided will deliver the same over to the complete control of said company, free of all charges thereon, save that of said bonds and stock as hereinbefore provided.

Clause (*9*). It is mutually agreed that in case it is necessary to execute any car trust or equipment trust contracts that may be secured by bonds as collateral, said company will assume said contracts, and when fully discharged will return all bonds deposited as collateral that may be in excess of amount actually paid by said company, to party of the second part.

In Testimony Whereof, The parties hereto have hereunto set their hands and seals, this eleventh day of May, A. D. 1889, at Belleville, Illinois.

THE BELLEVILLE & ST. LOUIS RAILWAY CO.,
By JOHN S. HILL, *President.*
EDWARD L. THOMAS. [SEAL.]

I hereby assign within contract to W. A. Adams as Trustee to parties to agreement entered into Sept. 2nd, 1890.

EDWARD L. THOMAS. [SEAL.]

1058 *Statement Referred to in Testimony of E. L. Thomas.*

Railway Company.

Analysis of Attorneys' Fees.

Date, 1893.	Holmes.	Koerner.	Luebke & Muench.	Miscellaneous.
May	$50.00			
Aug	.....	$100.00		
Sept	...	525.00		
Dec	50.00	100.00		
1894.				
Jan	.....	50.00		
Feb	.....	200.00		
March	.....	.....	.....	$100.00
Apr	.....	.....	...	150.00
May	.....	.....	.....	219.70
June	25.00	150.00	.....	50.00
July	225.00	25.00	.....	450.00
Aug	25.00	100.00		
Sept	.....	100.00		
Oct	25.00			
Nov	25.00	150.00		
Dec	...	300.00		
1895.				
Jan	25.00	50.00		
Feb	....	75.00		
March	25.00	50.00		
Apr	25.00	500.00		
May	..	300.00		
June	25.00	50.00		
July	25.00	215.00		
Aug	25.00	150.00		
Sept	.....	150.00		
Oct	....	450.00		
Nov	25.00	400.00		
Totals	600.00	$4190.60	.....	$969.70

1896.				
Jan.		100.00		
Feb		50.00		
March			$17.50	
Apr		50.00		
May		100.00		
July		200.00	85.00	
Oct.		350.00		
Nov		150.00	50.00	
1897.				
Feb.		150.00		
Apr		250.00		
May		50.00	10.00	
June		150.00		
Nov.		1050.00		
1898.				
Jan.		25 00		
Feb		100.00		
Apr			110.00	
May		200.00		
June		120.00		
July		200 00		
Aug		110.00		
Nov		200.00		
Dec		100.00		
1899.				
Jan				12.00
Feb.		50.00		
March.		225.00		
Apr	30.00	100.00		250.00
May	6327.00	12015.08		
June		100.00	75.00	
			$347.00	
1059				
Amt. F'rd				
Aug	$0	$150.00		
Oct.		150.00		
Nov		100.00		
Dec.		50.00		
1900.				
Jan.		50.00		
Feb.		50.00		
March		100.00		
Totals	$6957.00	$20985.68	$347.50	$1232.20
Grand Total				$29,522.38

Coal Company.

Analysis of Attorneys' fees.

Date.	Holmes.	Koerner.	Miscellaneous.
1893.			
Dec	$62.50		
1894.			
Feb.			$25.00
1895.			
Feb.		$75.00	
1896.			
Sept.		150.00	
Oct		150.00	(Dec.) 50.00
Dec.			
1897.			
Jan.		50.00	
Feb.		100.00	
1898.			
Feb.			72.50
Sept.			50.00
Totals	$62.50	$525.00	$197.50
Grand Total			$785.00

1060 *Statement Referred to in Testimony of E. L. Thomas.*

Analysis of Coal Statement.

Date.	Proper charges.	Improper charges.	Att'y fees.	Interest to M'ch 10, '94.
1893.				
Jan	$6000.00	.....	.....	$490.00
Feb	4375.00	.....	.....	331.77
March	32549.90	....	.....	2278.49
Apr.	1000.00	.....	.... ..	62.23
May	567.82	.....	.....	33.12
June	9586.83	.....	.....	503.30
July	5556.15	.....	.....	259.28
Oct	1500.00	.....	.....	44.58
Nov	1564.60	.....	$62.50	38.50
Dec	500.00	.....	.....	8.75
1894.				
Jan	1000 00	.....	.....	11.66
Feb	1003.80	.....	25.00	5.85
March	1086.39 (see explanation.)			
	$66290.49		$87.50	$4067.63
				To Nov. 8, '95.
March	500.00	2281.86 C. L.	....	52.50
Apr.	1500.00	.....	.....	142.50
June	500.00	.....	.....	42.50
July	4601.00	400.00	.....	368.08
Sept	1500.00	.....	.....	78.00
Oct	2000.00	.....	.....	130.00
Nov	1000.00	.....	.....	60.00
Dec	1538.35	.....	.....	84.50
1895.				
Jan	8.10	.....	.....	.40
Feb	...	.....	75.00	3.37
March	13247.50	3271.69 C. L.	....	596.56
Apr.	3500.00	30.00	.....	122.50
May	3001.60	.....	.....	90.40
June	2600.00	586.81 C. L.	.....	65.00
July	4163.35	1705.99 Ry.	.....	83.20
Oct	1000.00	.....	.....	5.00
Dec	1.25	592.15 C. L.		
Am't f'd	$40661.15	$8868.50	$75.00	$1924.15
1061 Acc't forward	$40661.15	$8868.50	$75.00	$1924.15
1896.				
Jan	.....	3715.65 C. L.		
Jan	.... ..	1200.00 T.		
Feb	.....	18627.50 C. L.		
March	.....	6918.75 C. L.		
June	1.75	.....		
July	.....	31.15		
Aug	.... .	18.30		
Sept	69.65	.....	150.00	
Oct	.... .	.75	150.00	
Dec	1.50	.....	50.00	
1897.				
Jan	.....	.....	50.00	
Feb	.....	10.00	100.00	
March	... .	15051.25 C. L.		
June	.. ..	3457.47 A ?		
Sept	215.40	3.20		
Dec	... .	19 05		

1898.				
Jan.	10.10	1974.35 A ?		
Feb.	26.50	.....	72.50	
March	....	535.14 A ?		
Sept.	20.00	....	50.00	
1899.				
March	8482.20	1461.80		
May	.....	295.75		
June	.....	43.80		
Aug	.....	59.00		
Dec.	.....	7625.00 ?		
1900.				
March	2000 00	679.88		
Totals	$52388.25	$70650.89	$697.50	$1924.15
Grand total as per statement			$190,114.63	$1924.15

1062 Recapitulation.

Total Statement paid out		$186534.75
To transfer from Railway Company		5979.88
Total		$191,114.63
By Statement	$66377.99	
" Improper charges	70650.89	
" Proper charges	52398.25	
" Attorney's fees	967.50	
	$190,114.63	$190,114.63

1063 *Explanation.*

Money expended as per statement	$66,377.99
Interest to March 10, 1894	4,067.63
Notes given by Leathe for Coal Lands, in Feb. & M'ch, 1893	45,680 50
Interest on same to March 10, 1894, due but not then paid	2,370.36
	$118,496.48

Bonds of the Company were given to Mr. Leathe, for the sum of $118,500.00, and accepted by him at par, under Resolutions of the Stock-holders and directors, of dates of March 10th, 1894.

The total improper charges in settlement is claimed to be	$70650 89
The coal lands items, including interest, carried into statement and paid by bonds are	49072.77
Leaving a balance of	$21578.12
Coal land item to Gundlach, March 27, 1895, of $13642.33, Company should have paid $12247.50, charge to Leathe	$1394.88
Leaving balance of	$20183.29
Coal land to J. Voellinger, July 11 1894, of $500.00 was correct when made but should have been credited with $400.00 on sale of same land back to Voellinger, chargeable to Leathe	400.00
Leaving balance	19783.29
Coal land item to Anthony Pfeiff-r of July 10, 1895, for $2750.16, Company should have paid $2163.35, chargeable to Leathe	586.81
	19196.48
Coal land to Alex Pfeiffer of July 11, 1895 is not chargeable to Coal Company but to Railway Company	1705.99
Leaving balance	17490.46
Items paid on account of old Crown Coal Company have been put under the head of improper items and amount to	13523.81
Leaving balance	3966.68

Transferred from Railway statement item $3579 88, being Harmony Mine Judgment against Coal Company, of which $290.0 was properly chargeable to Co., balance to Leathe		679.88
Leaving balance		$3286.80
$1200 item to Taylor Jan. 23, 1896, not chargeable		1200.00
Leaving balance		$2086.80
Item of $9944.00 Mar. 1899, is a proper charge up to Nov. 8, 1895 and $8482 is chargeable to Company and to Leathe		1461.80
Leaving balance		$625.00
Costs in injunction suit brought by Leathe against Thomas are in no manner chargeable to the Co. amount		295.75
		$329.25

This balance is made up of court costs since Leathe has received the $500,000.00, and is an improper charge.

1064 The amount of Proper Charges" per statement, includes amount of loss which is represented by items of "Cash loaned on statement. This loss is due solely to the refusal of Mr. Leathe to consult about the business, and his determination to carry it on himself contrary to the agreement of March 25, 1893, and legally ought to be charged against him as follows $41072.28
Of this, however, a part is improvement, amounting to 13154.75

Balance net loss		$27917.53

If above loss is not to be charged, the account will stand as follows:

Total paid out as per statement			$190114.63
Credits,			
By amount settled March 10, 1894		66377.99	
" " " but on statement		49072.77	
" " " Improper charges		21578.12	
Total		$137028.88	137028.88
Balance			$53085.75
This is made up of proper charges		$52388.25	
Attorney's fees		697.50	
		$53085.75	$53085.75
Proper charges		$52388 25	
Attorney's fees chargeable to Company		122.50	
		$52510.75	$52510.75
Interest per statement to Nov. 8, 1895			1924.15
Total credits			$54434.90
Deduct credits other than above:			
General expenses		$299.83	
Repayment of loans		4214.40	
Collection from Simms		1244.77	
Cash on hand		45.95	
Office fixtures		142.25	
Total		$5947.20	5947.20
Balance proper credits			$48487.70

Leathe sold Railway bonds $500,000.00 and coal bonds $200,000.00 for the sum of $500,000.00 or at the rate of 71 3/7 per cent. of the face value, and taking each to be of equal value, his coal bond account would stand as follows: $200,000 00 of which $118500 00 belonged to him, leaving $81500.00 for which he is accountable to the Company at 71 3/7 per cent. of $58214.28

Credit by above statement:

Balance due Company		48487.70
		$9726.58
From which must come contingent claims		$9726.58
Day Brick Company	$110.00	
Adams Heirs	4241.10	
Total	$4351.10	4351.10
Balance in hands of Leathe		$5375.48

1065 *Analysis of Railway Statement.*

Date.	Proper charges.	Improper charges.	Att'ys' fees.	Interest.
1893.				
Jan.	$502.16			$85.36
Feb.	2178.35	$750.00		359.50
March	2429.76			388.76
April	4143.19			662.20
May	8975.06			1353.75
June	8228.68		$50.00	1193.15
July	6603 23	333.48		926.03
Aug.	2430.92			341.67
Sept.	1974 07		100.00	324.87
Oct.	2054.33		525.00	256 77
Nov.	3807.89	250.00 Kent.		456.94
Dec.	1736.75			216.96
1894.			150.00	
Jan.	4501.17			500.62
Feb.	784.75	65.90	50.00	110.31
March	11696.03		200.00	1079 60
Apr	1740.48		100.00	180.29
May	3040.26		150.00	293.77
June	837.13		219.70	89.99
July	14312.06		225.00	1198.96
Aug.	15468.71	22.85	700.60	1171.24
Sept.	25421.23		125.00	1786.46
Oct.	16163.01	500.00 Chenot.	100.00	1052.22
Nov.	6460.85	480.36 Marshal	25.00	398.15
Dec	6738.64		175.00	387.10
1895.			300.00	
Jan.	3501.68	1025.95 961 Taylor		
Feb.	6407.90	3401.54	75.00	178.83
March	3976.45	3332.34 Churchill	75.00	291.73
Apr.	1790.36		75.00	166.53
May	2699.82	19.00	525.00	81.03
June	16433 85	470.00 Marshall	300.00	88 71
July	2977.64		75.00	413.19
Aug.	2038.13		240.00	64.35
Sept.	1741.92		175.00	37.69
Oct.	2827.51	10733.33 Adams & Leathe	150.00	18.91
Nov.	31511.94	1033.76 Reeb.	450.00	16.38
Dec.	450.83		425.00	
1896.	331.42			
Jan	199.25			
Feb.	12.00		100.00	
March	1583.85	10.00	50.00	
Apr.	76.97		17.50	
May	31.33	46.75 900 Stephen	50.00	
June	10.10	37.15	100.00	
July		205.80		
Aug.		109.00	285.00	
Sept.				
Oct.		25.00		

Nov.		40.91		350.00	
Dec.				200.00	
1897.		187.50	Snyder.		
Feb.		52.10			
March		438.95	Kent		
Apr.		10.00		150.00	
May		15.00		250.00	
June		187.00	Snyder	10.00	
Aug		96.00		100.00	
Oct					
Nov.		15 00		1050.00	
Dec		83.75			
Amt. frd..	$229731.66	$20821.83		$8472.80	$16171.95
1066 Amt. frd..	$229731.66	$20821.83		$8472.80	$16171.95
1898.					
Jan.		$19.50		$25.00	
Feb.	$1500.00	193.25		100.00	
Apr.				110.00	
May.				200.00	
June		44.50		120.00	
July.		142.00		200.00	
Aug.				110.00	
1895.					
May.	3.00				
1896.					
Oct.		.25			
1897.					
Apr.		2.30			
May.				50.00	
July.		.25			
Sept.		1.10			
Nov.		.80			
1898.					
Jan.		.80			
Apr.		.20			
Oct.	75.00	76.00			
Nov.	152.50	26.50		300.0	
Dec.		327.61		100.00	
1899.					
Jan.				12.50	
Feb		43.70		50.00	
March.		229.15		225.00	
Apr.				130.00	
May.		58.05		18342.08	
June				350.00	
July		6.30		75.00	
Aug.		68.95		150.00	
Oct.				150.00	
Nov.	7500.00	910.19		100.00	
Dec.				50.00	
1900.					
Jan.		27.75		50.00	
Feb.				50.00	
March		854.47		100.00	
Error.	3.13				
Totals....	$238965.29	$23655.51		$29522.38	$16171.95

Totals are as follows:

Per Leathe's statement	$295723.06
Less transferred to Coal account	3579.88
Per statement above	$292143.18

Explanation.

Proper charges		$238865.29
Improper charges		23655.51
Attorneys' fees		29522.38
Total		$292143.18

The items that go to make up "improper charges are so numerous that an explanation can not be well given, therefore the total will be charged $23655.51

1067 Improper charges forward $23655.51

The charges for Attorneys' fees are enormous, and mostly for litigation for which the Railway Company is in no way chargeable, as will be shown by "Explanation of Litigation" herewith presented. $3000.00 would have employed an attorney by the year to attend to all the legal business of both companies, and therefore that allowance has been made.

(See also Attorneys' account herewith presented.)

Attorneys' fees charged	$29522.38	
Proper charges $3000.00 2 yrs. 4 mos.	7000.00	
Balance charged to Leathe	$22522.38	$22522.38
Total improper charges per statement		46177.89
Total as per statement		$292143.18
Total improper charges		46177.89
Proper credits per statement		245965.29
Interest on payments to Nov. 8th, 1895		16171.95
Transferred from Coal account		1705.99
Total proper credits		$263843.23

Leathe sold $500000.00 of Railway bonds, for which he is responsible, under his contract at par: But if he is charged the proportion of amount received, the account would be as follows:

71 3/7% of $500000.00		$357142.85
Total credits		263843.23
Balance in Leathe's hands		$93299.62

To this must be added Receipts as follows:

Gross receipts as per statement	$7784.96	
Less expenses chargeable	2829.86	
Net Receipts	$4955.10	$4955.10
		$98254.72
Total Balance held by Leathe		$98254.72

Contingent Claims as of Nov. 8th, 1895.

Thomas' Claim, Dec. 21 1893	$53022.23	
Interest to Nov. 8th, 1895 at 5%	4992.90	
Total to Thomas Nov. 8th, 1895	$58015.13	
Less Notes and interest to Leathe	3105.50	
Balance to Thomas Nov. 8th, 1895	$54909.63	
Adams's investment in Railway	$22174.72	
Interest from Jan. 1 1891 to Nov. 8th, 1895	6430.66	
Total to Adams Nov. 8th, 1895	$28605.38	

Taylor's investment in Railway	$1500.00	
Interest from Jan. 1 1891	285.00	
Total to Taylor Nov. 8th, 1895	$1785.00	
Due Adams, Taylor & Thomas, Nov. 8th, 1895		$85300.01
1068 Balance of Railway funds in Leathe's hands Nov. 8th, 1895		$12954.71

Recapitulation.

Railway funds in Leathe's hands		$12954.71
Coal funds in Leathe's hands		5375.48
Total		$18330.19
Paid to Adams	$10000.00	
Paid to Taylor	1200.00	
Total	$11200.00	11200.00
Balance surplus in Leathe's hands		$7130.19

1069 We desire to offer before the Master the opinion of the Supreme Court of the State of Illinois or of the Appellate Court of Illinois, the volumes and pages and proper styles of cases to be hereafter submitted before the Master, in the cases of Edward L. Thomas *vs.* the Crown Coal & Tow Company, and Taylor and Adams and the St. Louis, Belleville & Southern Ry. Company against E. C. Rice; the defendant stating that he will not object to the opinions on the ground that they are furnished from the ordinary reports of the state and not certified as ordinarily required by law, but reserving the right to make any objection in law that he might see fit with respect to the competency, relevancy and materiality of the opinions or their contents.

ADOLPH H. STILLE, a witness called on behalf of the complainant, being duly sworn by the Referee, testified as follows:

Direct Examination.

By Mr. SMITH:

Q. Mr. Stille, will you please state your full name?

A. Adolph H. Stille.

Q. And you are an officer of the Union Trust Company in the City of St. Louis?

A. I am a trust officer now and acting secretary, the secretary *pro tem.*

Q. I hand you three papers which I am about to dictate to the stenographer and ask you if you recognize them and whether or not they come from the files of your company?

A. Yes, sir, they do.

1070 Admission.—It is admitted between counsel that the signatures attached to these three receipts or three papers are genuine.

The first is (reading): "Resolved, that the Union Trust Company, of St. Louis, trustee in the mortgage given by this company to se-

cure its bonds, be authorized and requested to make deliveries of said bonds as follows, to-wit:

To Samuel H. Leathe.....	$118500;
To Bart S. Adams.....	10000;
To John T. Taylor.....	4000;
To Edward L. Thomas.....	5000;

All the balance of said bonds to Samuel H. Leathe, treasurer, $62500.

I, Samuel Leathe, secretary of the Crown Coal & Tow Company do hereby certify that the above and foregoing is a true copy of a resolution introduced and passed at a meeting of the directors of said company held at the office of the company in Belleville, Illinois, on March 10th, A. D. 1894, and that six of the seven directors of the company, being a quorum were present and voted in favor of said resolution.

SAMUEL LEATHE,
Secretary of the Crown Coal & Tow Company.

[SEAL.]

The next one is: "Received, St. Louis, March 12th, 1894, from the Union Trust Company of St. Louis, Trustee, 125 bonds, numbered from 276 to 400, both numbers included, and of the aggregate par or face value of $62500, and being a portion of the bonds made by the Crown Coal & Tow Company (a corporation under the laws of Illinois), dated March 1, 1894, payable in 20 years from their date with the right in the company to call them for payment on and after March 1, 1899. Each of said bonds is of the face or par value of $500 and is certified by the said Union Trust Company of
1071 St. Louis, the trustee of the deed of trust, securing said bonds.

These bonds are delivered to the undersigned as treasurer of said Crown Coal & Tow Company, in pursuance of the resolution of said last named company adopted on the 10th day of March, 1894, a certified copy of which resolution has been delivered to said trust company.

SAM'L H. LEATHE,
As Treasurer of the Crown Coal & Tow Company."

The third is: "Received St. Louis, March 12, 1894, from the Union Trust Company of St. Louis, trustee, 237 bonds numbered from 1 to 237 both numbers included, and of the aggregate par or face value of $118500, and being a portion of the bonds made by the Crown Coal & Tow Company (a corporation under the laws of Illinois), dated March 1st, 1894, and payable in 20 years from their date (with the right in the company to call them for payment on and after March 1st, 1899). Each of said bonds is of the face or par value of $500 and is certified by the said Union Trust Company of St. Louis, the trustee in the deed of trust securing said bonds. These bonds are delivered to the undersigned in pursuance of the resolution of the said Crown Coal & Tow Company adopted on the 10th day

of March, 1894, a certified copy of which resolution has been delivered to said trust company.

SAM'L H. LEATHE."

CHARLES W. THOMAS, a witness called on behalf of the complainant, being duly sworn by the Referee, testified as follows:

Direct Examination.

By Mr. E. L. THOMAS:

1072 Q. Mr. Thomas, what is your name?
A. Charles W. Thomas.
Q. Where do you live?
A. Belleville, Illinois.
Q. What is your business?
A. Lawyer.
Q. How long have you been practicing law?
A. About 30 years.
Q. What practice have you had, what experience have you had in the business of corporations, railroad and coal companies, etc., any special experience?
A. Yes, sir.
Q. In what way?
A. I have been the General Counsel of the Wiggins Ferry Company, and the Consolidated Company, for 14 years. Prior to that I was the general counsel of the St. Louis and S. E. Ry.
Q. I want to ask you if you are acquainted with the affairs of the Belleville City Ry. and Crown Coal & Tow Company?
A. I am very well acquainted with the affairs of the Belleville City Ry. Company, because I at one time owned all of its stock except 3 or 4 shares, and was its Secretary for a number of years and up to December, 1893. The Crown Coal & Tow Company and the Crown Coal Company, I don't know so much about the affairs of the Crown Coal & Tow Company as I only came into that as a stockholder some time in 1893.
Q. Do you remember the claim of E. C. Rice *vs.* the Belleville City Ry. Company?
A. I do.
Q. Mr. Leathe testified that was a bogus claim, and that he knew nothing of it?

A. Objected to as Counsel cannot afford in this matter to go into a retrial of all the lawsuits that were had between those parties who sued either Mr. Leathe or these companies. Mr. Leathe de-
1073 fended the cases and it is immaterial whether the cases were good cases or were not good cases which the Master hardly desires to determine.

Mr. THOMAS: We cannot get at the settlement of these accounts unless we show Mr. Leathe's statements were not true in regard to these matters.

Mr. KOERNER: It was a case against the company.

Mr. THOMAS: I was telling Mr. Thomas for the purpose of con-

tradicting Mr. Leathe what Mr. Leathe testified to just to pave the way and to get at the contradiction.

Mr. KOERNER: The question might be proper whether Mr. Leathe so considered it bogus.

Mr. THOMAS: Honestly considered it so.

The REFEREE: I suppose that is now of the items Mr. Leathe claims you are attacking.

Mr. THOMAS: That is right, sir.

The REFEREE: The idea is that he had no right to defend that claim.

Mr. THOMAS: He knew all about it; he says he knows nothing about it.

The REFEREE: The question is whether he defended it in good faith or not.

Mr. THOMAS: That is the idea whether the Court can gather from all the circumstances whether that defense is good faith or not.

The REFEREE: I think you have a right to show that.

Mr. THOMAS: Then I will go into all this evidence; I want to show the good faith in some of those things.

Q. Now, Mr. Thomas, Mr. Leathe testified as I stated to you that this was a bogus claim, he never heard of it and knew nothing about it, and never agreed himself to pay it. I want to ask you
1074 whether his testimony in that respect is true or not?

A. I don't know what he testified to; I know what the facts are.

Q. State what they are?

A. Prior to January, 1893, I owned most of the stock of the Belleville City Ry. Company; subsequently changed to the Belleville & Southern. Some time in January or February, 1893, I had occasion to call upon Mr. Leathe at his office or at Mr. Chipley's office in the City of St. Louis with the books and papers relating to that charter and the records of that company. Mr. Leathe at that time contemplated the use of that charter instead of the old charter of the road that was formerly projected and since built. I among other things in the conversation told Mr. Leathe and Mr. Chipley that the Belleville City Ry. Company was indebted to E. C. Rice in the sum of $1500 for money which Mr. Rice had expended for the Company in the purchase of the right of way, and that I would not permit the charter to be used, nor would I consent to any transfer of it unless the parties interested agreed to pay that debt. I explained to Mr. Leathe at that time the debt was barred by the statute of limitations, that it was a debt of honor and that I would under no circumstances permit the use of the charter unless that debt was paid. Mr. Leathe agreed to pay it, told me that was all right, out of the first moneys coming into the hands of that company. The matter ran along until August 1893.

Q. Was there anything took place between March 23rd and March 25th, 1893?

A. I don't remember anything; I remember some time in August, it was a long time ago, but I distinctly remember what occurred in August, 1893; I being still secretary of the company, Mr. Leathe

one of its directors and its president, about Saturday the 6th or 7th of August he directed me as he had a right to do to call a meeting of the board of directors. I called that meeting; it was for
1075 the succeeding Tuesday or Wednesday, the 13th or 14th day of August. The quorum,—at the time I called that meeting, the time that it was held on Monday, the preceding meeting, Mr. Leathe came to my office; I had prepared certain resolutions to be voted at that meeting, one of which was an acknowledgement of the debt of Mr. Rice, and a new promise to pay it in accordance with the prior understanding which existed between all the parties. Mr. Leathe read that resolution in my office among the others and said that was all right and correct. On that day, on the 11th day of August the *quorum* board met, but Mr. Leathe was not present. The meeting was adjourned for a few days according to my present recollection; I was directed by the board to notify the absent directors and notify Mr. Leathe. I did so; at the next meeting Mr. Leathe was not present but a quorum of the board was present and the resolutions as drawn by me and approved by Mr. Leathe in my office were passed, including the resolution acknowledging the debt of Mr. Rice and making a promise to pay him. My letter to Mr. Leathe is in some of these records calling his attention to it.

Q. It is in the records here?

A. Yes, sir. After that Mr. Leathe who was at that time the owner of most of the stock which was controlled by him and very properly so with, the board of directors at some subsequent meeting between that and the latter part of September,—my recollection now is it was the 24th of September, 1893,—rescinded that resolution. I arose in the meeting in Mr. Leathe's presence and told him it was a dishonorable act and immediately resigned my connection with the company and have not since had any connection with the company. Mr. Koerner was present when I told him that.

Q. I want to ask you, Mr. Thomas, if you know who controlled these companies?

1076 A. Mr. Leathe controlled them; he had the majority of the stock.

Q. The control or management of it, the handling of them?

A. Mr. Leathe.

Q. Mr. Thomas, I want to ask you if you are acquainted somewhat with the litigation, ordinary litigation in the railway business and in regard to fees of attorneys doing railway business; you know these two companies; you know the nature of the business that ordinarily arose in those companies?

A. I know the nature of the business and how it arose.

Q. Well, what in your opinion was the fair, reasonable,——

Objected to any inquiry in regard to that prior to November 8th, 1895, because as shown here the fees have been determined in an action at law.

Mr. THOMAS (addressing counsel): You claim, Mr. Koerner, not being notified, that Mr. Leathe can go to work and not notify us to do anything with it and give an arbitration against him.

Mr. KOERNER: If he arbitrates the matter for you, yes, sir.

Mr. THOMAS: And arbitrates his individual fees that are within the others and not be able to divide them?

Mr. KOERNER: No; in that event you can point them out of course.

Mr. THOMAS: I have pointed them out. Your arbitration arose out of his individual business as well as the business of the companies; if he had no individual business that you were arbitrating, how does that come to be put in your statement previously?

Mr. KOERNER: I say you are not chargable with that if you can find anything of that kind.

Mr. THOMAS: You knew at the time.

(To the witness:)

Q. I want to know what your services in January were worth to the railroad company; what in your opinion for any good
1077 attorney would be a right and proper charge for the business of that company per annum, both those companies, an annual employment?

A. About $2000.

Q. I will ask you if it is usual and proper or improper in those cases to employ an attorney by the year?

A. It is customary to do so, in our state, in our county; it is found to be the most satisfactory method of doing that business.

Q. Well, that is the most economical and best way of doing the business?

A. It is thought to be so by those engaged in it.

Q. I want to ask you if you are familiar with the methods of keeping the records of co[illegible]ions and particularly of this kind of a corporation, these corpo[illegible]ions? There is a charge, there is in this statement a charge in these items to consultation and advice during a period covered by this bill, that was from the middle of August to the 8th day of November, 1895, to the Crown Coal & Tow Company and St. Louis Belleville & Southern Ry. Company, from August 1st, 1893, to November 8th, 1895; consultation and advice, being from day to day during said period and covering all subjects arising during the course of business of said companies, also covering all questions arising from the relations of the different parties in said companies to each other; services in the matter are bonding said two companies and of drawing and preparing the various contracts and agreements arising out of the business of the said two companies during said period, $5,000; with a similar charge of another counsel for the same business for the same period of $6,000. Do you think those were proper charges?

A. No, sir.

Q. Why were they not?

1078 A. They are grossly excessive. I will state that I prepared the resolution, the mortgage and the bonds of the Belleville City Ry. Company myself.

Q. Do you know who prepared the mortgage and bonds of the Crown Coal & Tow Company?

Q. You did. And for all my services *as* in the course of those matters afterward I received the sum of $500 and credited it on the payment of my stock.

Q. 5 shares of stock?

A. Yes, sir. I am General Counsel of the Company that does 6 times the business of both these companies put together, and I get a salary of $3,000 a year.

Q. These two charges that I read you of the $11,000 you will bear in mind are exclusive of the litigation of the property being charged for besides; for instance I will read you?

A. Well, it would be at least 3 times too much, or at least double the amount that would be ordinary and proper in such cases, in which would be included all the litigation in both companies.

Q. Now, for instance, I will just read you a case perhaps with which you are familiar or not; you know of the bill that was first brought to enjoin us from proceeding, at Chambers, of Leathe against Edward L. Thomas and Adams, the first litigation?

A. I think that was the first step in the litigation; I don't remember whether I was a party to that litigation or not.

Q. No, you were not a party; the charge in that case was $250?

A. That was an application made at chambers for an injunction which was denied; and I think $100 would have been ample in that case. There was no possible ground for an injunction.

Q. You are acquainted with those cases which were tried before Judge Canby, are you not, and Judge Canby determined them?

A. The case of Shedd?

1079 Q. One of them was tried and the others were not?

A. I am acquainted with them.

Q. Do you know what the three suits involved?

A. Compared with what I have been mentioning or testifying to here I think one of them involved maybe $800 or $1,000.

Q. The Bank Note Company; do you know what that was?

A. $500, something of that kind.

Q. There were two of them on two $750 notes and one of them a judgment for $625. The charge in that case was for a change of venue to the Circuit Court, before it came to the Circuit Court, $1500, and the charge was $100; and then there was $1500 charge in those cases for the trial of them in the Circuit Court, making $1,800. What do you think of that charge?

A. That is about as much as was involved in both cases. I should think probably $100 would have been a fair charge in those cases.

Q. Then in the case of the others regarding the Thomas affairs, including suit for a vendor's lien brought by Mary O. Thomas, suit in assumpsit brought by Gundlach, and Anthony Pfeiffer, foreclosure suits of Phillip N. Gundlach, etc. and Alexander Pfeiffer, $1,000?

A. That is three cases.

Q. Those are foreclosure suits?

A. They were mechanics' liens, I believe; they were dismissed and never tried. The others were ordinary mortgage foreclosure suits.

Q. What would be a reasonable fee for the defense in that case?

A. There ought not to be any defense in the mortgage case.

Q. What would be a reasonable fee now, if a man had to defend those cases?

A. Just to defend it $200, if there was a defense to make. There was none to make; it was simply a foreclosure.

1080 Q. Nor was there any made, as far as that is concerned. You are familiar with the case of Edward L. Thomas *vs.* Mr. Leathe, removed to the United States Court; were you in that case?

A. I was the counsel in the case for the plaintiff.

Q. What question was involved in that, any question in regard to evidence or anything?

A. There was no evidence taken in the case, no important evidence.

Q. The charge in that case removed to the United States Court is $3000?

A. Well, that was a case of considerable importance, but I think $1000 would be a proper fee in that case. The case afterwards went to the Court of Appeals and the records in both cases were there; $1500 would not be too much.

Q. Well, another attorney charged $1500 besides the $3000?

A. $1500 would be a proper charge in the case.

Q. That was a case against Mr. Leathe individually, was it not?

A. That was an individual case of Mr. Leathe's.

Cross-examination.

By Mr. KOERNER:

Q. Mr. Thomas, you know that Mr. Leathe when this suit of Rice was brought immediately opposed its payment and said it was not the proper thing to do.

A. Yes, sir, he did.

Q. And said that he had no recollection of ever having promised to pay and could not promise to pay it hadn't enough to pay it ?

A. He didn't say it to me.

Q. What did he say to you?

A. He didn't say anything to me of that kind, because I knew he hadn't.

Q. Well, you would know if he objected to its payment?

1081 A. I know that he contested it through the Courts and spent a good deal of money in the litigation.

Q. You considered yourself responsible to Mr. Rice, did you not in that case?

A. I did not, no, sir; it was never any assumption of mine either, for Rice bought my share; it was the company's debt to Rice for its right of way to the company.

Q. At the time you say Rice did this work the company was Thomas?

A. Rice did not do any work at that time; he advanced that money to the company to purchase the right of way.

Q. Exactly; at that time there was nobody in the company except yourself, was there?

A. Yes, sir.

Q. You had all but 3 of its shares?

A. No, at that time I did not own anywhere near all the stock.

Q. Now this right of way that you speak of that Mr. Rice acquired was not the right of way that the company used, was it?

A. No, it was not the right of way that they afterwards used.

Q. That is a right of way on the turnpike where the electric road is now built, isn't it?

A. Yes, sir.

Q. So this road in this enterprise got no benefit of it whatever?

A. It had the benefit if it desired to use it; if it wanted it; that is not Rice's fault.

Q. Well, it was abandoned long before Mr. Leathe came into it?

A. No, it was not abandoned, nor was it used; it was in abeyance.

Q. There was no construction of any kind upon the road until Mr. Leathe got the charter for the other road, the Belleville City Road?

A. No, sir, no part of it was built.

1082 Q. The first time that there was any writing about it is in the resolution which you say was passed in August at a meeting at which Mr. Leathe was not present?

A. The first time that I knew of any writing.

Q. At which the resolution was adopted at a meeting in which Mr. Leathe was not present; and the first meeting thereafter at which Mr. Leathe was present that resolution was rescinded?

A. Yes, sir, but Mr. Leathe had ratified it, approved the resolution before then.

Q. That is as far as the record goes; he moved in favor of rescinding it, didn't he?

A. As far as the record goes, yes, sir; the record goes still further, that on that day I resigned the secretaryship, and I resigned on that account and notified Mr. Leathe of it in your presence and in the presence of that board there assembled.

Q. Mr. Thomas, when those cases of Shedd and others were tried in the Circuit Court at Belleville and Judge Canby presided, the question there tried and attempted to be enforced by the plaintiffs involved the question of Mr. Leathe's direct promise to pay all the debts of the Belleville & St. Louis Ry. Company?

A. I understood that something of that kind was involved and that Mr. Leathe was defending those cases in order to avoid the personal liability.

Q. Well, so that there was then involved in the case more than the immediate money involved in it?

A. Nothing whatever as far as I remember; money was considered; there was a great deal involved; but as far as Mr. Leathe personally was concerned he was personally endeavoring to avoid personal liability for all of the debts of the Belleville & St. Louis Ry. Company in the litigation of the Belleville & St. Louis Ry. Company.

1083 Q. If that suit had been found against him he would have been liable, or supposed to be liable for the old debts of the old concern which amounted to about $80000?

A. He would individually, yes, sir.

Q. So you see now there was more involved than the mere pecuniary value that the suit involved?

A. Mr. Leathe had to defend this charter; there was involved in that suit more as far as Mr. Leathe personally is concerned than the mere money value of the amounts involved in the litigation.

Q. Well, is that fact not properly taken into consideration in fixing attorneys' fees?

A. In fixing the attorneys' fees, yes, sir.

Q. Mr. Thomas has asked you in relation to the fees in the case, Mr. Thomas. I asked him for the purpose of getting at the facts; he stated that?

A. I answered the question. I was under the impression these suits were brought against the company; since you mentioned it I now remember they were not brought against the company but against Mr. Leathe individually. That of course I would say would change my views with respect to the amount of fees that ought to be charged to Mr. Leathe. I think the fees were not exorbitant against Mr. Leathe himself.

Mr. KOERNER:

Q. Now, Mr. Thomas, in the case of an attorney being employed to do the business of a constructing railway which meets with much, possibly many diversities without an annual employment the only way to reach the question of fees earned is by finding out what was actually done, isn't it?

A. Certainly; that is true where there is no annual employment, the actual items would have to be investigated in order to ascertain what is just.

1084 Q. Now, in this case there was an arbitration; arbitrators consisting of Mr. Cambell of St. Louis; do you know him, Given Cambell?

A. I know the gentleman.

Q. Mr. Samuel M. Holliday?

A. I don't remember him.

Q. You know that they are reputable members of the St. *members of the St.* Louis bar?

A. They are supposed to be.

Q. And Mr. O'Brien, he was another lawyer. Were you a witness before that arbitration?

A. I was not.

Q. You know as a matter of fact, Mr. Thomas, that there was on account of the war that broke out between Mr. Leathe and some of the other parties interested in this road more than an ordinary amount of litigation?

A. No, sir, there was not any more than ordinary litigation except on the part of the company itself there was a great deal of litigation, unceasing among the stockholders and officers which did not involve the company nor its roads.

Q. Well, a great deal of it was, Mr. Thomas; we will not stop to discuss that?

A. Some of them did involve the company more or less; the vast majority of it did not.

Q. Well, I take issue with the statement a vast majority, but we will not take up the time with that now; do you remember there was a condemnation suit in which this company acquired the depot grounds adjoining and claimed by the Cairo Short Line as part of their own depot grounds; do you know about that case ?

A. Yes, sir, I was counsel for the defendant in that case.

1085 Q. Were you?

A. Yes, sir, the Wiggins Ferry Company was defendant.

Q. Not the Wiggins Ferry Company; I don't mean the Cotton Compress cases; I mean the St. Louis, Alton & Terre Haute cases?

A. I remember the case; I was not in that case.

Q. No, I think you were not. Well I don't know whether you know that is a pretty hotly contested case and the claims were very high and involved a very high class of testimony?

A. I know that you attempted to cross the railroad or cross its yards; there was a contest.

Redirect examination.

By Mr. E. L. THOMAS:

Q. These cases that you say, Mr. Thomas, some of them involved the railroad company, did they involve it directly or did they arise out of the conduct of Mr. Leathe in such a way as to make it necessary to bring suit against him?

A. I can't tell that without taking up each case. My memory is not clear enough on that, that line of litigation to say about it except in a general way.

Complainant here closes his case.

At this point the further hearing was adjourned to Saturday, August 25th, 1900, at 10 A. M.

Saturday August 25th, 1900, 10 A. M.—Pursuant to adjournment as above the parties met this day, but the defendant not being ready to proceed, the hearing was adjourned to Monday, August 27th, 1900, at 10 A. M.

1086 MONDAY, *August 27th*, 1900—10 a. m.

Pursuant to adjournment as last noted the parties met this day and the further hearing was resumed as follows:

Present as before, Mr. Smith, Mr. Thomas, the Master, Mr. Leathe, Mr. Koerner, Mr. Taylor and Mr. Orpen the stenographer and Mr. Charles W. Thomas.

Defendant's Case.

SAMUEL H. LEATHE, being re-called, testified as follows:

Direct examination by Mr. KOERNER:

Q. Mr. Leathe, it appears from the pleadings and admissions in this case that you received from Mr. Gary November 8th or 9th, 1895 $500000 of par value of bonds of the St. Louis Belleville & Southern, formerly Belleville City Ry. Company, $200000 of par value of bonds of the Crown Coal & Tow Company, and all but about 1500 shares of stock in both these companies, and made your personal bond and obligation to the purchasers for all that you received in the sum of $500000. I will ask you whether the stock which you turned over in pursuance of that transaction was considered of any value on the purchase, whether you received anything for the stock?

A. O considered it of no value and received nothing for it.

Q. The amount of same did not reach the par value of the bonds by $200000; that is right?

A. It did not.

Q. You have made a charge here, Mr. Leathe in your account for your personal services in attending to this trust money; how much time did you devote to that, and in what years?

1087 A. From the beginning of 1893, sometime in the early part of January, 1893, to the time of the sale. In January I did not devote all my time, but I fairly embarked in it; I don't remember the exact date; it was sometime in January, until the time of the sale; I devoted all my time.

Q. Up to when?

A. Up to the time of the sale.

Q. And after that did you devote much time?

A. After that I devoted a good deal of time.

Admission.—It is admitted that in case Mr. Leathe is by law under the circumstances of this case in the judgment of the Court entitled to compensation for his services for which he has charged, the amount which is charged is entirely reasonable.

The REFEREE: That includes the charge both before the sale and after.

Mr. KOERNER: Yes, sir, it is a lump charge.

Mr. SMITH: The charge is a lump charge of $20000 and is intended to cover all services in both companies both before and after the sale.

The REFEREE: I call your attention to it as that contention might possibly be made and so as to avoid the necessity of testimony by Mr. Leathe, as possibly you could not separate it.

Mr. KOERNER: You sold in November, 1895?

A. Yes, sir.

Q. Now, how long did your active attention to the matter continue after that?

A. Well, I don't think that I can answer satisfactorily without an examination of the affairs; from those I can give it.

1088 Q. Well, up to the time you made this report, Mr. Leathe, in November or October, 1898, did you devote considerable of your time to this business?

A. I devoted a good deal of time to it, yes, sir; but to say how much or approximate it I could hardly do that in a satisfactory way.

Q. Before that time you devoted practically all your time to it, did you?

A. I did.

Q. Well, if you can't say any nearer than that, I will let it go at that. Now, I want to read you, Mr. Leathe, for the purpose of refreshing your recollection, some of the proceedings of the stockholders' and directors' meetings which are already in the record.

Mr. SMITH: There is no objection on our part if you just want to tell him what that is without reading it.

Mr. KOERNER: I am referring to the stockholders' meeting of the Crown Coal & Tow Company held on the 1st day of March, 1894; I will read it. I will say this, Mr. Leathe, that at a meeting of the stockholders of the Crown Coal & Tow Company on the 1st day of March, 1894, it appears the following proceedings were taken. There were 1694 shares of stock represented. On motion Mr. S. H. Leathe was made chairman of the meeting and Samuel Leathe secretary; thereupon the meeting was postponed until 12 o'clock; meeting called to order at 12 o'clock by the chairman Mr. S. H. Leathe, there being 1392 shares of stock represented. The dispute as to the amount the Crown Coal & Tow Company's property and good will was taken by this Company was this day settled by agreement of all the stockholders present and said figure was fixed at $18000 as of March 1st, 1893, the same not to include the book accounts belonging

1089 to the said Crown Coal Company. The stockholders then proceeded to the election of directors to serve the ensuing year. The chairman ordered a vote to be taken and appointed Messrs. John T. Taylor and Fred B. Merrills as tellers. The tellers reported the following named persons as having received the number of votes set opposite their names respectively.—Thereupon the chairman declared the above named persons elected, S. H. Leathe, Samuel Leathe, John T. Taylor, Bart S. Adams, Fred B. Merrils, Edward L. Thomas and L. M. Chipley. John T. Taylor then presented the following resolutions: Whereas this company is largely indebted and whereas it is our purpose to pay certain indebtedness and all indebtedness which may hereafter accrue, and to sink, fit up and equip two coal shafts upon the coal lands purchased by the company on the line of the Belleville & St. Louis Ry. Company, be it thereupon resolved that the Board of Directors of the Coal Company be authorized to borrow the sum of $200000 and that said board thereupon shall cause to be issued $200000 of the bonds of this company, said bonds to run 20 years and to bear 5% interest payable semi-annual-, principal and interest payable in gold coin. Said bonds shall also be made payable on or after 5 years from their date at the option of this company. That said Board of Directors procure the Union Trust Company of St. Louis to act as Trustee. That said board is hereby authorized and directed to execute, acknowledge and deliver to said trustee a mortgage on all the property and franchises now

owned by this company and which it may hereafter acquire, said mortgage to be in the usual form of mortgages of like character. It having been moved and seconded that this resolution be voted upon by ballot the tellers Messrs. Taylor and Merrils then collected the following ballots resulting in 1648 ayes and 313 1/5 noes, the negative vote being cast by Mr. Chipley. Thereupon the chairman
1090 declared the resolution passed.

The proceedings then go on as follows: S. H. Leathe then presented the following resolution: Whereas, the capital of this company has been contributed in unequal proportions by various stockholders—(The resolution as read to the witness will be found in this record on page 58). That resolution was adopted by an affirmative vote of all but Mr. Chipley.

Then there was a meeting of the board of directors on the 10th day of March, 1894, and it appears from the records that Mr. John T. Taylor then offered the following resolution: Resolved that the Union Trust Company of St. Louis, trustee in the mortgage given by this company to secure its bonds, be authorized and requested to make deliveries of said bonds, to-wit:

To Sam'l H. Leathe	$118,500
To Bart S. Adams	10,000
To John T. Taylor	4,000
To Edward L. Thomas	5,000

And of the balance of said bonds to S. H. Leathe, treasurer, $62,500.00.

Q. Do you recollect those meetings, Mr. Leathe?

A. I do.

Q. Now, I will ask you whether the understanding was that this was a final determination of the matters up to that time?

A. By no means.

Q. Well, what was it?

A. It was that these bonds should be distributed for the protection as stated in the documents you read, for the protection of those that had contributed the sums of money and property to this company, not in settlement; there was no final settlement made or contemplated.

1091 Q. Was there any agreement existing between you and Adams and Taylor and those parties?

A. All the proceedings we had were under the agreement of January 24th, 1893.

Q. That agreement under which you assumed the roads?

A. Under which I went into the enterprise.

Q. Now, did you make any objection to having any part of these bonds delivered to Mr. Thomas at that time?

A. I did.

Q. What was your objection based upon?

A. It was based upon the agreement of January 24th; he was not entitled to anything.

Q. Under that you thought you had the right to hold them until the final settlement?

A. I was to hold them I had the right to hold them, yes, sir under that agreement.

Q. Why was it then that you did concur in the resolution directing that $4000 be turned over to Mr. Thomas?

A. Mr. Thomas got out of his chair and came to me and said in a sort of whisper, not in a loud voice, but in a whisper perhaps,—"If you don't consent to that distribution you shan't issue the bonds, the bonds shall not be issued."

Q. Then I believe you attached those bonds in the hands of the Union Trust Company for some debts and claims that you had against Mr. Thomas?

A. I did.

Q. And afterwards they were released and went into some of the bonds to Mr. Taylor?

A. They were in the deal.

Q. Mr. Taylor's claim in this case is, one of these claims, that he had loaned or given Captain Adams $1500 which he, Cap-
1092 tain Adams, put into this enterprise, and that he is trying to recover this on the strength of that $1500; what do you say as to Mrs. Adams, legatee of the Adams estate, is she considered responsible?

A. I so understand it, yes, sir.

Q. Before he filed his bill do you remember of Mr. Taylor ever claiming that you owed him for anything that he had invested with or lent to Captain Adams?

A. Never.

Q. I believe in the suit of Adams against you they have always claimed for the full amount which they said Captain Adams had put in?

A. They have.

Q. Did they give you any intimation that any part of it belonged to anybody else?

A. They did not.

Cross-examination.

By Mr. SMITH:

Q. As this evidence is to be used in both cases I just want to ask you a question or two and then turn you over to Mr. Thomas. Mr. Leathe, you say that you took the $118500 worth of bonds heretofore as security?

A. Simply as security, yes, sir, something that might be,——

Q. Did you ever have any note evidencing that indebtedness or any written paper showing that the company owes you $118500?

A. I made a memo. have a memo. there, and made a statement.

Q. Well you have no note with the ordinary collateral provisions in it?

A. I had the agreement of January 24th, 1893.

1093 Q. Did you ever have any note with any collateral provisions which authorized a sale of the col-ateral?

A. I don't know what you mean.

Q. Well, you know what an ordinary collateral note is?
A. What kind of a note do you mean? A collateral note.
Q. A collateral note?
A. I have no notes at all of any of the parties.
Q. You never had any note with the Crown Coal & Tow Company which authorized you or any other paper which authorized you to sell or dispose of those bonds?

Objected to the expression any other paper.

Q. I am asking him about any other paper; he might have an agreement of some kind if there wasn't a note?
A. I had general charge of the affairs and the properties of both companies.
Q. I am asking you if you ever had a scrap of paper, or a piece of paper with a scratch of writing on it evidencing this indebtedness in the sum of $118500 or approximately that amount which authorized you to sell or dispose of these $118500 of bonds that you took as security?

Objected to as a question of law; the question is what he did, whatever he did was a matter to be determined from the testimony in the case.

The REFEREE: I suppose with a little variation in the form it will do; any paper which he claims gave him authority he can produce.

Mr. SMITH: That is what I really meant, or the disposition of them.

Q. Now, did you have any paper of that kind?
1094 A. The records contain some papers or some notes of that kind, I think; I don't remember whether they do or not; I have charged the purchase of $500000, but it was done under the agreement.
Q. You say that you simply took those bonds as security; now, in what manner did you do that?
A. I took them for my protection.
Q. That is security, isn't it; that is what you mean?
A. Yes, sir, and some of them were held after that for my protection.
Q. Very well; if you took those bonds as security, under what authority right or power will you explain to the Master did you reduce them to your own possession?
A. Under that resolution.
Q. Exactly; you reduced them to possession under the resolution of March 10th, 1894; that is right, ain't it?
A. Yes, sir, according to the receipts given by me, and according to the rights that they have given me.
Q. There isn't any question about that, is there?
A. I did it, as I did everything else, because I considered that I had the right and the authority to do all those things.

Mr. KOERNER:

Q. You did it under the contract in evidence?

A. The contract of January 24th was my guide and under it I did everything.

Mr. SMITH:

Q. You don't intend to qualify the answer that you made a few minutes ago in answer to my question that you reduced them to possession under the resolution of March 10th, 1894?

A. I told you before that all I did was under the agreement of January 24th.

Q. Do you now intend to get away from the answer?

1095 A. No, sir, not a bit of it.

Q. Then you don't stand by the answer that you gave?

A. I stand by the answer it was under the agreement of January 24th, and everything else was subject to that.

Q. Did you answer under the agreement, or when you heard your counsel make a suggestion; do you intend to depart from the answer you made, or to stand by the answer you made that you did it under the resolution of March 10th, 1894?

A. If I did any act it was under the January 24th agreement; whatever proceedings were had were in conformity with it.

Q. No doubt proceedings were had on the 10th of March, 1894?

A. Whatever was done on the 10th of March, 1894, was under the January agreement.

Q. Is there any doubt that proceedings took place on March 10th, 1894, under which you acquired these bonds?

A. I am not disputing that record.

Q. Then the record is true, isn't it?

A. I am not disputing it.

Q. Isn't it true?

A. Well, so far as I can say I can't say it is not true.

Q. Don't you know it came from your own books?

A. It is a copy of the original, and I presume it is straight.

Q. And don't you know it came from your own records?

A. Yes, sir.

Q. You noticed it here?

A. I didn't see the copying, I didn't do the copying.

Q. You know it is true, don't you?

A. No, I don't know it; I infer that it is.

Objected to as counsel has the resolution.

Q. I want to see if you know about this; you are willing to admit that it is a true resolution and that the proceedings that are

1096 set forth under that head actually took place as alleged, of your own knowledge?

A. I have no reason to dispute it.

Q. Mr. Leathe, you say that this stock that you turned over was of no value?

A. I say so, yes, sir.

Q. Would Mr. Gary have made the claim that he did without your turning over to him the number of shares of stock that you did?

A. No, I suppose he would not; I dont' know that he would.

Q. Don't you know absolutely that he would not.

A. No, I don't, I presume he would not; he might not; if I had been in his place I should want the stock.

Q. You do know as a matter of fact, in order to secure all of this stock that was absolutely necessary for this trade that he paid Charles W. Thomas 49 cents a share that time?

A. I don't know what he paid; I know he paid quite a large sum of money whatever he paid, I don't know what it was.

Q. You have heard that it was 49 cents on the dollar have you not?

A. I have heard you say so; I have heard a great many things.

Q. Then you heard from people that were interested what it was?

Objected to as it is immaterial what they got.

Q. You don't know then what the value of that stock was at the time that Mr. Taylor turned it over to him?

A. I don't know there was any value in it.

Q. But yet it was absolutely necessary to secure it to turn it over in order to make this trade?

A. It was not necessary for me; I did not secure it.

Q. Mr. Gary secured it; didn't you secure it for him?

A. Not at all.

Q. You did not?

A. No, sir.

1097 Q. I am talking about that you turned over to him?

A. I turned it over to him, yes, sir, as I had authority to do, the stock that I turned over to him.

Q. You know very well, and I ask you this, if you didn't know it from Mr. Gary himself that he was bound to secure the stock of these other people and in order to get it in he would have to get it at par?

A. No, I didn't know that.

Q. He never told you so?

A. I told him he had to get that before; that I could not convey that, that he had to acquire it.

Q. Well, I understand he had to go out and get it?

A. I suppose he did; I don't know of my own knowledge; I don't know he ever did get it.

Q. You say that Mr. Taylor prior to the bringing of this suit never made any demand on you for a settlement? Did I understand you?

Mr. KOERNER: For the $1500.

Mr. SMITH: I ask the question do I understand you to say that prior to the bringing of this suit Mr. Taylor never made any demand on you for an accounting which would involve the $1500 of his bonds and stock?

A. He said he would like a statement of his affairs, would like to settle up, something of that kind, that he would like a statement. I said to him until we got through with our litigation with E. L. Thomas, through with him, that I did not know where we stood, I didn't know anything about it.

Q. That he turned over to you; you knew he had $1500 in there?
A. No, I didn't.
Q. You mean to say that he never told you that $1500 of the bonds were his?
1098 A. He never told me, to my knowledge.
Q. You say that positively as far as you remember?
A. I don't say positively what he may have said the last 5 of 6 or 10 years; I don't know just to state the fact that I remember it.
Q. You don't remember whether it may have been before?
A. It is too long to remember; I don't know anything about it.
Q. What did you pay the Adams for their $10000 of bonds?
A. I didn't pay them anything for their bonds, I didn't pay them anything special for their bonds.
Q. What did they get for their bonds?
A. They didn't get any specific sum.
Q. Well, this is the fact, isn't it, that they gave you $10000 worth of bonds?
A. I don't think they got $10000.
Q. That is right, isn't it?
A. They got what the record shows.
Q. Mr. Leathe, I am asking you; it is not on the record; I am asking you now as a matter of memory?
A. I believe it is $10000 bonds I had, and they got the par value of those, they got the face value; I believe so.
Q. That is all I want to ask.

Cross-examination.

By Mr. THOMAS:

Q. This conversation that you say you had with Edward L. Thomas,——
A. I want to qualify that last statement that I stated there. The receipts will show how that is.

Mr. KOERNER:

Q. And there was written agreement about it?
A. Yes, sir, I don't think he did get the face value of those bonds; I think I was mistaken.

1099 Mr. SMITH:

Q. He did give you $10000 worth of bonds or sold you $10000 worth?
A. He charged for bonds sold; you can find that stated on the bonds, whatever bonds he had that he turned over to me I receipted to him for them on account.

Mr. KOERNER:

Q. And he receipted to you?
A. He receipted to me for the amount on account, the interest in both companies; that is my recollection of it.

Mr. SMITH:

Q. Well, however the fact is that contemporaneously with the tak-

ing of that $10000 worth of bonds, didn't you agree, whatever receipt was given, you would give him or give him $10000?

A. I didn't give it to them for the bonds.

Q. I don't care what you gave it to them for; it is a fact, isn't it, and will you please answer my question, that at the time that they gave the $10000 worth of bonds they got $10000?

A. Well, they got,——

Q. Can't you say yes or no to that?

A. They got some of it; partly in money and partly in notes.

Q. Now, you have loaned money to Bart Adams and Bart Adams turned in, and you turned in notes and some cash?

A. They receipted for $10000 on account of interest in both companies.

Mr. KOERNER:

Q. And they receipted to you?

A. They receipted to me what I paid them on that account.

Mr. SMITH:

Q. They got money on their indebtedness; they got $10000 on your total indebtedness, didn't they?

A. I think that is right.

Q. And in the case of the sale from Mr. Taylor, have you received the bonds at any less than par?

A. From Mr. Taylor.

1100 Q. In what sum and in what way?

A. Verbally.

Q. Verbally?

A. Yes, sir, without any specific value, at no specific value.

Q. Give us the value and the authority for you thereupon to act?

A. I had Mr. Taylor's consent to my turning over these bonds, but there was no agreement as to what should be paid for them.

Q. Mr. Taylor gave you his $12700 worth of stock and his $4000 worth of bonds and the interest he had in there which you got from him worth $1500, with power on your part to do just what you pleased with it?

A. If there was any such agreement as you say it was something I had nothing to do with; no demand on me; I had nothing to do with it.

Q. And the others you were just left to do with as you pleased?

A. I made such an agreement with him about his stock, a certain agreement about the stock.

Q. And during all of these years subsequent to the time you got $500000 in cash in your hands he never made any demand on you excepting on one occasion when you gave him the $1200 on account?

A. Yes, sir, he has asked me for a settlement; I told you just a little while ago what I told him.

Q. You never made any statement to him, did you?

A. He didn't want any statement, and he never asked for one.

Q. Did you ever make him a statement at all?

A. He never asked for one.

Q. He never asked for one?

A. No, sir.

Q. Now, until he brought this suit, you say that on one occasion Mr. Leathe, Mr. Taylor did not come in and make a demand on you for a statement and an accounting when Obey Owens was with him?

1101 A. I don't have any recollection of Oby Owens being there; I never saw him with Oby Owens.

Q. Didn't he take Owens into your office to ask you to go over the accounts with Owens so that Owens as a book-keeper might make him a statement?

A. If he did I have no recollection of it.

Q. You won't swear he did not do that?

A. I would not swear that he did not at all, no.

Q. Now, do you remember whether or not, give us your best impression, you refused to allow that to be done?

A. Well, I think that I would refuse to allow Oby Owens to take my books by any means.

Q. Didn't you refuse to allow him to do it in your office?

A. I refused to allow Mr. Taylor to carry my books away.

Q. Isn't it a fact that you also refused to make him a statement of your own through your own book-keeper?

A. No, I did not at that time.

Q. Well, put it in this way, you did refuse, if I understand you, you did refuse to allow his book-keeper or expert to make an accounting; now, did you ever offer to make him one yourself until you were forced to in this Court?

A. I have answered every inquiry he made; if there was anything he wanted to know I never refused to show it to him.

Q. How could he know if you didn't give him an accounting in some way of the hundreds of thousands of dollars that were expended by you alone without any knowledge on his part?

Objected to.

A. He didn't do anything, or he would complain of it.

Q. Didn't he call on you a great deal, time and time again and postponed the bringing of this suit before he could get an accounting from you?

1102 A. No, sir, he did not.

Q. He did not?

A. No.

Q. He never made any such demand?

A. He came to see me not long ago about the time he brought this suit and said he would like to settle up his affairs; I said I would make a final settlement, but there was no use talking about these things, that I could not do it.

Q. Didn't Mr. Needles and Mr. Taylor go to you and make a written demand on you?

A. Make a written demand?

Q. Yes, for a settlement of the various things.

Mr. KOERNER: If you have any written demand produce it.

Mr. SMITH: It would be in his possession if it was made on him?

A. I got no such paper, I know; I don't destroy such papers; I don't think I have got any such paper.

Q. Mr. Leathe, until forced by litigation instituted by your beneficiaries did you ever make a statement to any one of them?

A. A written statement?

Q. Yes, I mean any statement of account to any one of them?

A. The account was made up; they got that under this proceeding.

Q. Isn't it a fact that every one of your beneficiaries interested in this deal have had to sue you in Courts of Justice and bring you through the power of the Court to the accounting and force you to make a statement?

A. The record will show what suits have been brought; there is the record of suits which were brought.

Q. Just answer my question if you please; have you made to any beneficiary represented by you as a trustee a statement of account in this matter until brought into a Court of justice and forced
1103 to make it?

A. I made partial statements to them; whatever statements were made.

Q. Will you swear a statement was made to him, that you ever made a statement up to the time this was made?

A. I have not made any complete statement.

Q. No, sir, that is a fact isn't it?

A. I could not make it; I can't make it now.

Q. That is a fact, isn't it, that until forced in this proceeding you never made any complete statement such as you have made in this case, or any statement?

A. No, there never has been any complete statement made.

Q. Or any statement?

A. Oh, yes, there has been various statements made.

Q. Well, did you make any statements to any beneficiary except what you made here?

A. The records show here there are a few law suits, over a dozen law suits I would say.

Q. You could show him by the amount that was expended and the amount received and the excess if any there was, just as you have shown here, couldn't you?

A. I could by taking up and going over it and spending a week or two or a long time, we could have come at the statement just as we are coming at it now; that never was asked for.

Q. In November, 1895, when you say that a false entry got into your book and you could not say how many suits were pending or what suit was pending that interfered with the fund at that time; would that interfere with a statement of the fund at that time?

A. I could not tell you how many suits were there.

1104 Q. Now, as a matter of fact there were no others, and isn't it a fact Mr. Leathe, that in November, 1895, when you made this error in your book there was no suit with Edward L. Thomas or any one else to interfere with a statement?

A. Edward L. Thomas had suits pending that he had brought

and threatened, and he claimed and wrote to me that he had claims of some hundred thousand dollars against me.

Q. Do you say that Mr. Thomas had any more suits pending than those named?

A. It was pretty difficult to say what Mr. Thomas had pending.

Q. I am asking you; if you don't know you can say so, I am inquiring of you and you have given no answer?

A. I didn't know everything that might be in his mind.

Q. You won't swear that there was claims for any such sum?

A. It is not necessary; the record will show for itself.

Q. You don't know?

A. I don't know without referring to the records.

Q. Now, Mr. Leathe, in your accounting here you have sought to charge interest on everything that you have disbursed, haven't you?

A. Everything that I was entitled to I have.

Q. Will you te'l me in your account and indicate to the Master where you have given us credit for interest that you have earned; I had examined it; upon anything in your possession over the $500-000 or the balance of it?

A. I could not say that without I looked it over.

Q. It is a matter of fact, isn't it, that you have charged your beneficiaries with interest on all disbursements, and yet you have not allowed one penny of interest in their favor?

A. The interest has been charged up to November, 1895.

1105 Q. And interest has been charged up to the very day that you lodged your account with the Master?

A. Well, it may be in some instances, I can't say.

Q. Every time you have paid for anything you have charged interest up to the time of lodging the account, have you not?

A. I don't want to say that is so.

Q. You know very well that you have not allowed any credit for interest?

A. The account shows for itself; it is not necessary for me to testify to it.

Q. Very well, if your beneficiaries are not credited with any interest, you haven't credited them with any?

A. If they are entitled to any in the account and I didn't give them any they are entitled to it still.

Q. Now you got some items in this account I would like to have you explain to the Master. On what theory do you seek to charge Mr. Taylor, one of your beneficiaries with money spent by you for detective service and watching your own lawyers and arbitrators in a lawsuit personal to yourself?

A. The reasons in that case were that I considered it the case of the company as well as in my own interest.

Q. In other words, you thought there might be some chenanigan or rascality between your own counsel and arbitrators that you had agreed on?

A. If there was anything crooked in it I wanted to know it.

Q. You know Mr. Given Campbell and Samuel N. Holliday, don't you?

A. Yes, sir.

Q. You have known them for how many years, 30 years?

A. I did not know Mr. Campbell at the time; I knew him in this suit; I didn't know him before.

1106 Q. You know his reputation?

A. No, I didn't know his reputation.

Q. Mr. Samuel N. Holliday was your counsel in some law matters wasn't he?

A. He has been in cases of mine, an attorney in some cases.

Q. You had learned of the standing and reputation in this community of Mr. Given Campbell hadn't you?

A. I had no reason to question it.

Q. Did you have any reason to question the standing and integrity of Mr. Samuel N. Holliday?

A. No.

Q. Did you know Mr. O'Brien who was a public officer for many years?

A. I wasn't so much acquainted with that.

Q. You know he was elected by the people to important offices for many years?

A. I knew his position.

Q. You knew he was a man of reputation?

A. Yes, sir.

Q. Well you considered, and I assume that you must have some little reserved respect for your counsel in view of the fact that he represents you to-day, and you thought or you think that it was proper for you in order to learn whether there was any rascality in the transaction, to employ a detective and have them held up for that?

A. There were some rumors that there was something crooked there, and I employed this man to hunt it up.

Q. What was the rumor?

A. Well there was a party operating; I know that Mr. Chipley was one.

1107 Q. Mr. Chipley is dead?

A. Yes, sir, otherwise I should not have mentioned his name probably.

Q. Now, the Adams estate made a certain contribution to this fund by the way of property etc. didn't they, or Captain Adams before his death?

A. Mr. Adams or his estate, Mr. Wm. Adams.

Q. Mr. Wm. Adams put money in this railway, didn't he.

A. I never knew Mr. Adams; I never had any personal acquaintance with him.

Q. You knew then what he came for, to name the persons interested?

A. I knew that he did, yes, sir.

Q. And it was on account of matters personal?

A. In the old company.

Q. And that you have apparently paid them as a claim $9900 and odd dollars?

A. That wasn't for everything, that payment.

Q. What was it for?

A. The property that they put in themselves.

Q. The property that they put in, and you have noted the ½ of that amount, you have noted ½ of the amount being the remaining ⅓ as a claim against you.

A. As a contingent claim.

Q. Well, I ask you whether or not it is not a proper claim and obligation that you have got to pay?

A. No, I am not prepared to say that, I don't know.

Q. Your statement shows ⅔'s paid to them; you have noted that ⅔'s of it is all right?

A. ⅔'s of it I considered so.

Q. And you have made a full settlement with them on a ⅔'s basis?

1108 A. No, not a full basis, a contingent basis.

Q. What is there back of that that remains unadjusted with the Adams?

A. Holmes agreed that the other ⅓ was to remain until the settlement of the affairs.

Q. Now, do you admit of record that the Adams estate or Holmes as its counsel has any right to a proportionate share with regard to the remaining ⅓; do you admit that of record?

A. No, they have no right to pursue me at present at all events.

Q. They have no right at all?

A. If in the settlement of these affairs there should prove to be a surplus, he would be entitled to something.

Q. For what?

A. For everything.

Q. In other words that includes Mr. Thomas and Mr. Taylor and all of the claims that are pending or that you know of, don't it?

A. It includes some of them.

Q. So that if the Court should decide that Mr. Taylor was entitled *for* $4000 or $5000 or $6000, and you should have to pay that, and the Court in Mr. Thomas' case should rule that he was entitled to a certain part of the ⅓ and you should have to pay that, then you are not liable to the Adams estate or to Bart Adams or any one of the Adams for one penny are you?

A. Well, I can't state that exactly.

Q. And if called on you would have to pay it yourself?

A. It would be a case if there was a surplus after that I would have to pay, they would be entitled to something.

Q. You have got that in writing, haven't you?

A. Yes, sir.

1109 Q. Have you any objection to handing a copy of it to the Referee?

A. No.

Q. Very well, and you will do that, will you?

A. Yes, sir.

Q. Mr. Leathe, you say that Mr. Thomas,—you complain or criticise the bringing of suits by Mr. Thomas, and among them a man-

damus suit to force the issuance of his stock in the Crown Coal & Tow Company, and you have sought in your account here to charge for the services paid by you to your counsel in that case; that is right, ain't it?

A. That is right, I considered it right, all the charges that I have made.

Q. Well, now, you were the president and treasurer of the Crown Coal & Tow Company on the 1st day of March, 1894, were you not?

A. Yes sir.

Q. And you recall this fact as shown by the records that Mr. Edward L. Thomas then moved that the president and treasurer issue the stock of the company to the stockholders entitled thereto which motion was unanimously adopted?

A. Well, I can't say; what document is that?

Q. I want to know if you recall the passage of that resolution which you voted for?

A. I don't recall it, no.

Q. You don't recall it?

A. No.

Q. You don't know; don't you know those were read; can you point to any part of it and say that is not correct?

A. I should presume that it was.

1110 Q. Now, did you being the president and treasurer of this company ever issue the stock in accordance with the resolution to Mr. Thomas and others?

A. Well, I didn't issue the stock, I think.

Objected to as totally irrelevant to this suit.

The Referee: He may answer it; it appears from the question read it is a charge of attorneys' fees for attending to that.

Mr. Smith:

Q. Isn't it a fact, Mr. Leathe, that that resolution directed you as an officer of the company to do this thing, and that you refused to comply with it, and further refused until the spring of 1894, subsequent to the passage of the resolution, although a written demand was made on you?

A. Well, there were reasons why it was not complied with when it was.

Q. That you did not is the fact; the ultimate fact remains that you did refuse to issue the stock whether for good or bad reasons?

A. Then the fact that the stock was not issued remains.

Q. It is also the fact that you did not issue it?

A. I think it was not issued.

Q. Didn't you refuse to issue it?

A. I could not say that I refused, no I won't say that.

Q. And you won't swear you didn't?

A. No, and I won't swear that I did.

Q. Now, Mr. Leathe, if I understood you correctly in your direct examination you testified that on the 10th day of March, 1894, Mr. Thomas at a meeting of the Crown Coal & Tow Company when the bonds were ordered to be divided, had some whispered talk with you?

A. He got up out of his chair and came to me and said if that resolution was not carried that I should not issue the bonds.

1111 Q. What was the nature we will call it of the threat, or it is immaterial if it was a threat?

A. He and Taylor and Chipley had the control of that meeting, and they could refuse to allow the issue of those bonds, they could prevent it.

Q. You mean that they would not have voted for the distribution of the bonds?

A. They would not have voted for the bonds, they would not have allowed the issue.

Q. They would not have allowed the issue of the bonds?

A. Yes, sir.

Q. So that you are positive that on the 10th day of March, 1894, at that meeting, at the time the distribution was ordered that Thomas threatened that he would combine with Chipley and Taylor to prevent a vote?

A. You asked my reasons for this and I said that I didn't know what Mr. Taylor said.

Q. Well, haven't I repeated it correctly?

A. Have you repeated it correctly; you have repeated a good deal here.

Q. Will you repeat it?

A. I said that after the resolution was offered he whispered if that resolution don't pass, those bonds will not be allowed to be distributed and that the issue of the bonds could not be made.

Q. What was the nature of the threatened combination with Chipley and Taylor; how was he going to do it?

A. Well, I say that he, Taylor and Chipley could prevent them; they had the affirmative vote; they could cancel the previous resolution. I may say with regard to that before you go any fur-

1112 ther, I may be mistaken as to its being at this meeting; it may have been at the previous meeting when the resolution was passed.

Mr. KOERNER:

Q. One of the meetings?

A. One of the meetings.

Mr. SMITH:

Q. Now, Mr. Leathe, do you remember what you paid John D. Jones for the house and lot that you bought at Centerville north of Belleville?

A. I don't carry those things in my head, no.

Q. Do you remember whether you paid him $5000 for it?

A. I don't remember; I paid that and I paid a mortgage probably; I think I paid $5000; I paid the mortgage that was on it, assumed the mortgage.

Q. You think you did assume the mortgage?

A. I think I did.

Q. You ain't sure about that?

A. I am as sure of that as of anything I can remember, it was so long ago.

Q. Wasn't that mortgage included in the purchase price of $5000?

A. I think not; I may be mistaken; I think not.

Q. The value of that property practically consisted in the house that was upon that, did it not?

A. No, it did not.

Q. You say it did not?

A. No, it did not, by no means.

Q. Can you say what that house was valued at?

A. I could not say what the house was valued at; I suppose it would cost to build that house perhaps $1200.

Q. At that time?

A. Perhaps.

1113 Q. When you bought it?

A. Perhaps $1200.

Q. How much of that property did you convey to the railroad?

A. Well, I can't recite that.

Q. Wasn't it a little triangle at the south end of the property?

A. It was a large piece.

Q. How deep was it on Centerville Avenue?

A. I could not tell you that.

Q. Oh, about?

A. I could not tell that; about I suppose on Centerville Avenue it might have been 100 feet; I don't know, might have been more or less.

Q. Now, the bulk of that piece of property together with the house on it you retained and transferred to your son Samuel, didn't you?

A. The property had very little value except for railroad purposes.

Q. Didn't you retain the greater portion of it with the house on it?

A. No.

Q. And charge the railroad company $3087 for the small piece that you transferred to them?

A. The piece that was retained at the price it was retained at I would have been glad to have sold it at the price of it; I got swindled out of it, I suppose.

Q. You never conferred with any of your beneficiaries as to the value,—for instance Mr. Thomas living in Belleville and who lived there all his life, you never conferred with him as to what would be a fair price or a fair amount for you to charge the railroad when you were retaining property that you bought as trustee, did you?

1114 A. I would like to say there never has been any question raised as to the amount.

Q. The question is raised now and from them here?

A. That is the first time.

Q. What I ask you, Mr. Leathe, is that you were buying and selling to your son, and whether you ever went to one of your beneficiaries or suggested to them that you would get a real estate man in

Belleville to value the part that you retained and transferred to your son Sam?

A. I had the opinion of various business men that had valued it.

Q. Name the business men that had valued it?

A. I don't recall now who they were; I consulted with different business men who valued the property; and the engineer had a good deal to say about that and others, I can't say who.

Q. You never went to your people whose money you were spending to ask them whether it would be fair or not for you to retain the larger part adjoining that property, and charge the road with *with* $3087, and particularly Thomas or Taylor who had lived in Belleville and were perfectly familiar with property and its value?

A. I bought the property because I could only get the right of way by taking in the whole, and I bought it and I would have had to pay as much for the right of way; Mr. Jones said he would not sell the right of way; that is my recollection of it, he would not sell the right of way for less than he would sell the whole property. Therefore that is why I had to buy the property.

Q. Granted that is true Mr. Leathe, you nevertheless invested in this property the money of yourself and your beneficiaries, and you did it without consulting with one of them and retained the
1115 bulk of it including all of the improvements that were on the property, and you have improperly charged the sum of $3087?

A. I retained what they did not need and at the values at which they are assessed.

Q. Now, you bought some property right opposite Mrs. Opp's?

A. Yes, sir.

Q. And you remember that that had as much frontage as the Jones property; I mean you conveyed as much frontage to the railroad as in the Jones case, didn't you?

A. Well, part of that property was,—I don't remember whether it was the same.

Q. Didn't it have a brick house on it?

A. It had a one story house on it.

Q. A one story brick house; that was bought for $2,000 wasn't it?

A. I can't say what it was I finally paid for it; I think probably that they were about the same price.

Q. Now, you bought some other pieces consisting of a number of lots from Mrs. Opp?

A. Yes, sir, I got that as I did the Jones property because I could not separate it.

Q. I understand that; now, those lots consisted of 15 lots of 50 feet didn't they?

A. Yes, sir; I don't remember the number of lots, whatever she had.

Q. And they had a frame house and some improvements on them, didn't they?

A. There was a little cabin.

Q. Well, call it a cabin, an improvement of some kind?

A. Yes, sir.

Q. Now, that was upon the hill, on the highest part?

A. It cost perhaps $100 to build?

1116 Q. Well, that is upon the hill, upon high ground?

A. Yes sir.

Q. And you got the whole of that property for $2,000, didn't you?

A. Well.

Q. And now, isn't it a fact, that in the hollow, down in the hollow in the lowest part of the property that you sold to the railroad 40 feet of right of way and charged them $1,000?

A. I sold the entire valuable part of the property, the frontage and the house on it on the frontage.

Q. Isn't it a fact, Mr. Leathe, I am talking about these lots?

A. They were all bought together.

Q. They were all bought together, and you took 40 feet of that at the foot, in the hollow and sold it to the railroad for the $1,000, when you only paid $2,000 for the 15 times 50 feet, including the house?

A. I sold the grade north, the most important and almost the entire length of the road I sold them.

Q. In other words, 40 feet down in the gutter or in the gulley, and the part you retained was the best part of that?

A. Including the frontage on the road, that contained the house?

Q. There were 15 lots?

A. There were including the gulley.

Q. I am not asking about the brick house here, only about the other 15 lots; that shack or shanty as you call it, that was on the high ground?

A. Only half of it.

Q. Now, there was a street running down, running toward the house, right in front of it?

A. I can't say where it was; it took in the gulley. I gave her more then,——

1117 Q. And 40 feet you say being down in the gulley?

A. You don't know what you are talking about.

Q. You correct me if I am not right; I am getting some benefit out of it if I don't know what I am talking about; I am getting some benefit and some information, I am learning something about it. I am asking you if this is the property that is part of those 15 lots, 750 feet; isn't that the fact you conveyed 40 feet of the 750 feet that you bought, and that it was a strip 40 feet wide?

A. Yes, sir.

Q. And there is 40 feet off of these lots down in the hollow; don't you know that is a fact?

A. I knew all the time I sold the valuable part of the property.

Q. Did you sell the railroad the valuable part of it, the property, after consultation with any of your beneficiaries?

A. I sold that to the railroad and the other property with their knowledge and without any remonstrance.

Q. Was there any knowledge on the part of your beneficiaries?

A. There was.

Q. Of this?

A. There was.

Q. On their part?
A. Everybody's part.
Q. Well, you remember the Peter Goss property, don't you?
A. Yes, sir.
Q. And you remember that you paid $1,800 for it, bought it for $1,800?
A. I don't recall what I paid for it.
Q. Well, now do you remember that the railroad only used a little strip being the average of about 40 feet?
A. Well, the railroad plat will show whatever it was, just what it contained.
Q. I am asking you if you remember it?
1118 A. No, I don't remember that.
Q. Well, see if I can refresh your memory?
A. You can only refresh my memory by that plat.
Q. A strip 40 feet wide across lot 9?
A. If you want to explain that, I should like the plat of it if you want to do that.
Q. I am asking you if you remember it?
A. No, I can't remember the plat of it.
Q. Now, you remember conveying to your son Samuel the portion of that property, the Goss property excepting the 40 feet, don't you?
A. Yes, sir.
Q. And you remember however, that he sold since then a portion of it?
A. No, I don't know he sold any of it.
Q. You don't know he sold any of it?
A. I don't.
Q. And you have charged the railroad company $1,300 for the 40 foot strip you gave them of the $1,800?
A. Whatever the records show I charged.
Q. I am reading from the record.
A. Well, whatever that shows is right I presume.
Q. Did you ever confer with any of your beneficiaries as to how much you ought to charge yourself for property of that kind that you bought and that you retained?
A. I made the sale at the time and there was nothing private about it.
Q. And you kept the best, too, didn't you, Mr. Leathe?
A. I sold the railroad what they wanted.
Q. And then afterwards you sold it to yourself?
A. I retained it, I had bought the property.
1119 Q. You were in that affair, you were in control of the railroad as its president and you were also acting on behalf of these people who were interested in the fund, weren't you?
A. I was acting that way, and I cheated myself in the transaction.
Q. You think you were pretty badly dealt with in this case?
A. If I had done as this man Nick Reeb wanted I would have sold for a good deal less and not retained any of it.
Q. You think you swindled yourself?
A. I do.

Q. Do you remember, Mr. Leathe, Jacob Voellinger's purchase?
A. Yes, sir.
Q. You remember that?
A. Yes, sir.
Q. You remember paying him $500 and charging it in your account here; I will show you the item?
A. I made the purchase of him and I resold the property.
Q. Now, you got $350 back, didn't you?
A. Whatever the records show I got.
Q. That is just what I am asking, the amount you got?
A. It shows what I got.
Q. Do you remember you got $350 back?
A. I don't remember, no, except what the record shows; I have to go there for it; I haven't got it in my mind.
Q. You don't show it; isn't it a fact if you remember that you had to get $350 back on account of that purchase, and it should show it?
A. I can't say I know the amount; I don't know the amount.
Q. You know that you got something, don't you?
A. Yes, sir. If it don't show it it should show it.
Q. Will you furnish it to the Master with the amount that you got back?
1120 A. I will most certainly.
Q. On the account which Mr. G. A. Koerner files you will show the Master where your item of that amount of $500 of Voellinger is to be allowed you?
A. If it don't show it, yes, sir.

Re-direct examination by Mr. KOERNER:

Q. These purchases made in Belleville, Mr. Leathe, when you were procuring the right of way, were for the railroad, this of Mrs. Opp?
A. Yes, sir, it was and a great many others.
Q. So then the condition that you found that you were advised was that you could purchase the property and it would not be larger than you would have to pay for the right of way alone, or not materially larger than you would probably have to pay for condemnation for what you needed?
A. I believe it was in every instance, yes, sir.
Q. For the purpose you took deeds for what there was?
A. I did.
Q. Did you want the property personally?
A. No, sir, by no means.
Q. You didn't want any over there?
A. No, sir.
Q. You had no intentions of that kind?
A. No, sir.
Q. After the conveyance was made to the railroad company of what was required on your contract of sale, there was some of it remained?

A. Some of it remained.

1121 Q. And you charged the railroad company and you charged the fund with all except the value of what remained; you charged yourself with that?

A. I did.

Q. You don't think the property is worth more; the land you sold is worth more?

A. As I said before I think I did allow too much for the property I retained.

Q. The pieces you bought just because you had it to do?

A. That right of way made a division and I didn't feel I could make the division as if I had been the only one interested, or that I would have been able to make. I felt that in the condemnation that others were interested in it as well as myself.

Q. And therefore you made what you considered a low value for the property you retained?

A. I did, yes, sir, so that there could be no question.

Q. There never was any question of the sale?

A. This was the first time I ever heard it raised.

The REFEREE:

Q. Was any report made to the company or companies of this division of the property and what the rate of value was for these different pieces, for the right of way?

Mr. KOERNER: That was after the sale.

Mr. SMITH: No formal report was ever made.

Mr. KOERNER: No formal report of this division was made after the sale.

The REFEREE: These facts came out now for the first time?

A. They ought to be on the record.

Q. On the record where?

A. In Belleville; they all went on record.

Q. You mean the deeds were recorded?

1122 A. Yes, sir, in Belleville at once when the sale was made.

Mr. SMITH:

Q. You never furnished anybody any statements?

A. Whenever anybody wanted to see the books I always offered to produce them.

Q. You never presented the railroad or your beneficiaries any statement until this one filed in this case which shows the amount that you charged the railroad company?

A. Haven't we gone over that a good many times?

Q. That you charged for these lands; they want to go over it again. I want an answer to my question; which involves an accounting; you can answer it and I want one?

(The question was repeated to the witness by the stenographer, on request.)

A. I have answered that several times; this is the first one I made and the first complete statement; I made other partial statements.

The REFEREE: Did your partial statements embrace these transactions we are talking about here?

A. Anything they inquired about.

Q. Did it embrace these, or do you know?

A. It embraced some of these.

Q. It may be, or it may be not; you know?

Mr. KOERNER:

Q. They knew at the time of these purchases; they knew all about these purchases?

A. They knew all about it and I knew I paid about as I say.

Mr. SMITH:

Q. At what period did you make that statement; did you ever confer with Mr. Thomas and Mr. Taylor or ever open your mouth to them in regard to any one of those transactions?

A. I never had opportunity to confer with Mr. Thomas, not at that time.

Q. You might have written him, mightn't you?

A. I might have done a great many things.

1123 Q. You didn't do that, did you? Your relations with Mr. Thomas have not been very pleasant, have they; down to the fall of 1898, your relations with Mr. Taylor were entirely cordial and pleasant?

A. Mr. Taylor never wanted a statement and never asked for a statement.

Q. And they were entirely cordial, were they not, up to the fall of 1898 when he brought this suit?

A. They were cordial as far as I know.

Q. He lived over in Belleville, didn't he?

A. Yes sir.

Q. And he lives there yet?

A. Yes sir.

Q. You saw him every week or two?

A. Yes sir.

Q. Will you swear that you ever called his attention to any one of these matters that we are talking about concerning this real estate, as to whether it was proper for you to charge the railroad company with so much and retain so much on your own part?

A. Mr. Taylor never took any interest in the business, in the railroad, nor looked into it. I never knew him to talk about it or care anything about it or show that he cared anything about it.

The REFEREE:

Q. Right in that connection I want to get a few of these transactions in my mind. The shape they take in my mind is about this, Mr. Leathe bought those different pieces of property in his own name, and that subsequently he sold the right of way to the road and charged them a certain figure for it and the balance of the property he retained.

1124 Mr. KOERNER: Yes, sir.

The REFEREE: When he bought that property originally he bought it for the road but took the title in his name; now it is a question whether that property still belongs to the road.

The WITNESS: I bought that for the purpose and have since disposed of it, bought it for the purpose of laying our side tracks on it as needed by the road, retained the land needed by the railroad to make all the switches; I did not want all this surplus land, only wanted or retained what was necessary for the railroad; we had fences and terminals there at Belleville, and there were different things.

The REFEREE: I just simply call your attention to it to bring out everything more on that point.

Mr. KOERNER: The way was simply this, when Mr. Leathe was constructing the road, your Honor knows when you go through a town sometimes you cannot buy a lot as cheap as you can to condemn your right of way through; they put it away up until finally the railroad condemns it.

The REFEREE: The question is when he bought this property, whether he bought them for himself or the company and took the deed in his own name as trustee.

Mr. KOERNER: He bought them really for the company.

The REFEREE: They belong to the company yet, or the people who are interested in it.

Mr. KOERNER: In other words what we want to prove is the value of the original property.

Mr. SMITH:

Q. Mr. Thomas made most of the trades himself?

A. No, he did not.

Q. He says he did?

1125 A. The Goss property or some of the properties.

Q. Didn't he make the Goss trade?

A. He had something to do with it.

Q. Didn't he make it?

A. No, he did not.

Q. Did he make the trades with Mrs. Opp?

A. No, I don't think Mr. Thomas had anything to do with it.

Q. Didn't he make the trade with Jones?

A. No.

Q. He had nothing to do with it?

A. He had something to do with it, yes, sir.

Q. That is what I mean.

A. Yes, sir.

Q. Do you mean that when,——?

A. I mean that he introduced me to these parties; he was acquainted with these parties.

Q. Didn't he fix the figures on it when you came over to advise with him also?

A. No, sir, he did not.

The REFEREE: At any rate I suppose Mr. Leathe has not charged the company with the original price of these properties?

A. No, sir.

Q. Simply charged them with the price of what he conveyed to them?

A. That is right, yes, sir.

Re-cross Examination.

By Mr. THOMAS:

Q. I want to ask Mr. Leathe some questions. I want also to introduce a resolution from the records and have it copied into the records; I will read it:

1126 "Resolution of the board of directors of the Crown Coal & Tow Company, that portion which appears of record on the 29th day of March, 1893; the board then proceeded to the election of officers and the following were chosen: Lucien M. Chipley, President, and Samuel H. Leathe, Vice President and Treasurer; James H. Waddick Secretary, Mr. Samuel H. Leathe offered the following resolution:

Resolved that the general manager of this company shall have general management and control of the business of this company, subject to the order of the president and the board of directors.

Mr. Adams moved that the resolution be adopted; Mr. Waddick seconded the motion, and it was unanimously adopted. L. M. Chipley was made general manager, all voting aye except Edward L. Thomas who voted no. Mr. Leathe upon whose motion Mr. Chipley was made general manager moved to reconsider the motion and the vote by which the motion was carried and the office of general manager left to be filled at some future meeting, and the board adjourned."

Now, the meeting of the 26th day of August, 1893, I only desire this portion of it which refers to the vote of the board of directors by which Mr. Fred B. Merrils was duly elected. Edward L. Thomas presented the following protest and asked that it be spread upon the records:

Whereas at the last meeting of the board of directors of this company it was agreed that Bart S. Adams and John T. Taylor should remain in the position they then occupied of managing the coal and river business of this company;

And whereas the president and treasurer have taken it upon themselves without a meeting of this board to discharge said Taylor and preventing said Taylor from performing his duties:

1127 And whereas we have been unable to learn the status of this company by reason of the failure of said president and treasurer to render us a statement of the affairs of said company upon request by us;

Therefore we the undersigned directors of this company hereby protest against the actions of said president and treasurer as above

set forth and ask that this protest may be spread upon the records of this company.

(Signed) EDWARD L. THOMAS.
JAMES H. WADDICK.
JOHN T. TAYLOR.

Which motion was carried by the following vote: Aye, S. H. Leathe, John T. Taylor, Bart S. Adams, E. L. Thomas, Samuel Leathe; Mr. Chipley voting no."

Mr. S. H. Leathe presented the following resolution:

"Resolved that the treasurer of this company be and he is hereby authorized to receive and give receipts for all money due and payable to this company from any source whatever, and to endorse checks and drafts in its name and in its behalf and full discharge for the same to give."

This resolution was unanimously adopted. Mr. Edward L. Thomas and Mr. John T. Taylor then tendered their resignations as directors, Being moved and seconded that the resignation be laid upon the table, it was carried by the following vote: —.

Mr. KOERNER: There is one question I want to ask Mr. Thomas.

EDWARD L. THOMAS, recalled:

Mr. KOERNER:

Q. You have a suit pending in the Circuit Court of St. Clair County, Illinois, an ejectment against this railroad company?

1128 A. Yes sir.

Q. That case if it should be decided in your favor they got to get a right of way; that was pending quite a long while?

A. For a number of years, since the summer of 1895.

Q. In case you should recover, it would be necessary to spend money in the purchase and condemnation to get that right of way?

A. About $400; I have offered them time and again to settle that matter, and take $400.

Q. I understood you to say particularly that you thought you would dismiss it?

A. I might possibly do that; I have not yet determined whether I will go on or dismiss it; I offered to take $400 at one time and am willing to take it now.

EDWARD L. THOMAS.

I want to make a statement in regard to that litigation, the litigation that Mr. Koerner spoke of, asking me regarding some cases brought by Taylor and Adams. Before I commenced any litigation in the fall of 1893, I said that I did not recollect any such cases. I know now from parties with whom I have talked, Messrs. Knispel and Boggs I didn't bring any cases; I had talked and Taylor had talked with Turner and Wilderman, and without my knowing any of it they brought these cases, one for Taylor and one against the Crown Coal & Tow Company for the Harmony mine, and one against

Mr. Leathe for the Harmony Mine. Those are the cases which were dismissed at the term of Court to which they were brought.

Mr. KOERNER:

Q. What term of Court was that?

A. September term, 1893. I tried to get them not to bring them and got Mr. Knispel not to sue Adams; I didn't go to Turner
1129 and Turner brought the suits and then dismissed them. No suit of mine was brought until the 5th of September, Mr. Koerner, that is after I wrote this letter of the 24th of August. That is all the information I desire to state.

Mr. KOERNER:

Q. Do you know when those suits were brought?

A. They were brought on the 30th day of August.

Q. 1893?

A. 1893, yes, sir.

GUSTAVUS A. KOERNER, being duly sworn by the Referee on behalf of the defendant, testified as follows:

Direct examination.

By VICTOR KOERNER:

Q. Mr. Koerner, state your name please and occupation?

A. My name is Gustavus A. Koerner; my profession is a lawyer; I reside in Belleville, Illinois.

Q. You are acquainted with Mr. Thomas, Edward L. Thomas, John T. Taylor and Bart S. Adams, and know Samuel Leathe?

A. Yes, sir, I am acquainted with those gentlemen, Samuel Leathe and Samuel H. Leathe.

Q. Have you been connected in a professional way in any litigation between those gentlemen?

A. Yes, sir, I have been connected in a professional way with the litigation arising out of their connection, and also litigation with the Crown Coal & Tow Company and the railroad company which was known at that time as the Belleville City Ry. Company; its name afterwards was changed and is now the St. Louis, Belleville &
Southern Ry.

1130 Q. When did your acquaintance with the affairs of these gentlemen and these corporations commence?

A. Well, I knew some of them, and my acquaintance with Mr. Leathe commenced in the month of August, 1893.

Q. And your connection with the litigation?

A. Yes, sir, at that time.

Q. What was the character of the litigation in that connection and the nature of it?

A. Well, of course it took me some little time to get acquainted with the undertakings or arrangements between these gentlemen. They seemed to rest partly on parol and partly on memoranda and agreements, and when Mr. Leathe first called upon me the difficulty seemed to be that while he had by far the largest interest in the

railroad company that was then talked about, there was a board of directors which he feared was going to take steps which would be injurious to the company, and there was one director who was acting, whose title as I recollect it was questioned by Mr. Leathe. A bill was filed to prevent his acting; that matter was soon disposed of however by this director, Mr. Waddick, resigning and somebody else taking his place.

From that time forward there was a constant irritation between Mr. Leathe on one side and Mr. Thomas on the other, sometimes also between Mr. Leathe and Mr. Adams, and Mr. Leathe and Mr. Taylor, which made of course a great deal of controversy. Then the construction of the railroad was commenced, and I was employed by the companies represented by Mr. Leathe who was its manager then to do whatever was required of me particularly in the matter of condemnation suits of which there were quite a number of some considerable importance. Mr. Thomas commenced
1131 early, sometime in the fall of 1893, a suit against the St. Louis & Belleville Ry. Company on a note which had been given to him by that company, which was the old company which had been originally intended by the parties to build the road. That had been changed as has been stated and a different charter had been acquired by the Belleville City Ry. Company. So the old road sank into insignificance and no one seemed to pay any attention to it. Mr. Thomas controlled it and had a note given to himself for $50000 and odd dollars and brought a suit on it. Mr. Leathe considered that it might be important that the suit might not go to judgment, and I believe I have got a little further yet with the situation; the situation now was changed by Mr. Thomas bringing suit on the note against the St. Louis and Belleville Railroad Company; but at the same time the suit was commenced he claimed a vendor's lien on this road by the Belleville & St. Louis Ry. Company; and also a suit was commenced by Mr. Thomas or by one Boling and Thomas claiming a mechanic's lien on the road for some construction. This was very shortly after I became employed in the matter at all, and it did look like a threatening mass of litigation; and it was thought best to attempt to bring the matter before a Court of Equity on account of the lien suits pending there.

While the suit was being tried we asked for an injunction against this litigation; the lien suits were dismissed which took the sting out of the case as we thought, and Mr. Thomas then proceeded to judgment on his note against the old railway company, and all these matters were defended of course in Court by Mr. Leathe.

After that a suit was brought by Mr. Thomas in the name of the Belleville & St. Louis Ry. Company for his use against Mr. Leathe, claiming that Leathe was responsible to him for the amount
1132 of this judgment. This Mr. Leathe defended in the United States Circuit Court where it was removed, it having been commenced originally in the St. Clair County Circuit Court; and also defended it on appeal to the United States Circuit Court of Appeals. I did not consider that this was Mr. Leathe's personal matter altogether for the reason that in case a recovery had been had neces-

sarily it would have been chargeable to the fund controlled by Mr. Leathe under agreements of Jan. 24/93.

Also I was engaged in this litigation in which there were a great many suits brought by different parties and against different parties until the time that Mr. Leathe sold as it has been stated here to Judge Gary. There had been no adjustment of counsel fees up, to that time. Mr. Leathe and I were unable to agree upon the proper charges; the question was submitted to an arbitration in this city and resulted in an arbitration or an award of the arbitrators fixing the compensation, which was confirmed by the Circuit Court of the City of St. Louis, and adjusted all matters up to that time Nov. 7, 1895, between us.

I will state that all this litigation upon which this allowance was made and which has been made, in my judgment affected these corporations and these beneficiaries in the trust and grew directly out of it, at least I can recall none at the present time which did not have its origin in this railroad and coal company business in which these getlemen were engaged. I will state that Mr. Leathe was very diligent in defending what he considered the interests of the corporations and the beneficiaries during all this time. He did not voluntarily pay these counsel fees to me and Mr. Holmes, but em-
1133 ployed counsel, Judge Lubke of the St. Louis bar, and made a vigorous defense.

After this time the litigation by no means stopped. At the time of the sale there were some suits pending to-wit the suit of Thomas or the Belleville & St. Louis Ry. for the use of Thomas against Mr. Leathe in which he attempted to recover on this judgment he had recovered against the old company of $53000, which was then pending in the Circuit Court of Appeals, I think, or in the United States Circuit Court at Springfield perhaps in the United States Court of Springfield which had not then been decided. As soon as that was decided the case went to the United States Court of Appeals. During the pendency of that suit it was absolutely impossible to make any statement or reasonable statement as to how these corporations or these beneficiaries stood, because if the case was successful it would have taken $50000 or $60000 out of the fund. That same suit now is pending in a different shape in the Circuit Court of St. Clair County.

The Referee:

Q. You don't mean the same suit, the same matter?

A. The same issue; that suit is I think pending and undecided in the Circuit Court of St. Clair County. And is in the shape of a suit or an action on some judgment recovered by Mr. Leathe against him (Thomas) in St. Louis brought in the Circuit Court of St. Clair County. Mr. Thomas then advanced the theory that Mr. Leathe was compelled to pay him this amount which he claimed to have invested in the old company whether or no under all circumstances; and that question is there pending now. I always thought and said to Mr. Leathe that until that question was determined he was
1134 unable to make the distribution of this fund or such part of it as should be subject to distribution, if there was any, which will appear by the accounts which have been rendered.

Since that time besides that suit there has been a great deal of further litigation; as Mr. Thomas has stated just now immediately after his falling out with Mr. Leathe the docket of the Circuit Court of St. Clair County was full of law suits brought by him some of which I have stated. In addition to those which he has related just now there are 6 or 7 or 8 law suits brought to the September term 1893 of the St. Clair County Circuit Court arising out of this matter. Among others the case of Shedd Brothers against Mr. Leathe and Shedd and Ferguson against Leathe, and the New York Bank Note Company against Leathe, which were all brought against Mr. Leathe by these parties on the theory advanced by Mr. Thomas in his suit. In other words that the contract of January 24th, 1893, had been abrogated, and that Mr. Leathe had after that promised to pay the debts of the old Belleville & St. Louis Ry. Company absolutely. Of course they were brought against Mr. Leathe personally. In my judgment Mr. Leathe as trustee for the parties in the agreement of January 24th, 1893, was compelled to defend them on their behalf as well as his own.

In the case of Needles against Leathe, it might be mentioned in that case Mr. Needles claimed a part and sought to recover part of the proceeds of this sale. He had an agreement in regard to stock similar to that of Mr. Adams which is in evidence here and this of Taylor's in evidence; this was exactly the same. He sued Mr. Leathe claiming Mr. Leathe had received a large amount of
1135 money for his stock and recovered a judgment in the Circuit Court of St. Clair County of some $900 which was necessary to take to the Appellate Court to reverse, where it was reversed, and remanded. It now stands for trial again in the St. Clair County Circuit Court. If the case Needles commenced had been successful or is successful it would of course reduce the fund to that extent as it was the entire fund was interested in defending these cases.

I will proceed to state what was involved in the Shedd case. It involved the same questions that were involved in the suits of Thomas which he claims is a personal promise, and its defense necessarily interested all the parties to the fund.

There was a great deal of important litigation since the time of the sale. Thomas and Adams and Taylor brought suits in different Courts and on different theories. Amongst others Mr. Thomas brought a suit against the Crown Coal & Tow Company in the Circuit Court of St. Clair County in which he asked to recover and did recover for those $5000 of bonds which had been at one time allotted to him and afterwards were surrendered and went into the sale; and also on what he claimed an accounting that was due between him and the Crown Coal & Tow Company on accounts which he claimed had been collected and ought to be collected in favor of the old Crown Coal & Tow Company. This was a suit in the hearing of which it took a great deal of time and a great deal of labor was involved to the parties concerned. It was considered by Mr. Leathe to be an utterly unjust and unjustifiable litigation. He defended against it, and after it came to judgment finally filed a bill in chancery in the Circuit Court of the United States to enjoin its col-

lection and its turning over the proceeds to Mr. Thomas. The injunction was granted to that effect in enjoining the prosecu-
1136 tion of the suit and enjoining a suit that had been litigated that time to a conclusion, and enjoining Mr. Thomas from collecting to his own personal use, and the injunction was granted to that effect by the Circuit Court of the United States and was afterwards dissolved by the same Court, and on appeal involved only the question of dissolution which was affirmed.

Mrs. Adams and Bart Adams brought two suits in the Circuit Court of City of St. Louis at the trial of which before Referee Rombauer it took a great deal of time, and finally was withdrawn from him, and I think they are both now referred to Judge Dillon the Master where there were hearings again upon one or the other of them, I don't know how many.

Mr. Taylor brought this suit and Mr. Thomas sued over in St. Clair County which is now pending already referred to.

All of that made a great deal of litigation which could have been avoided I thought if the parties had been willing to submit to an accounting; at all times Mr. Thomas claimed that he was entitled to payment whatever the result of the enterprise was and it made it difficult or impossible to make an account that would have been in justice to the parties. In my judgment it was always impossible and it is now until that question is determined impossible to make a true account between the parties.

Taylor and Adams also brought suits in the Circuit Court of St. Clair County on other claims which in effect were against these companies, that is against the Crown Coal and Tow Company, perhaps something against the St. Louis Belleville & Southern Railway. Mr. Leathe thought it necessary to defend those cases in his capacity for himself as trustee and the other parties, as the result of the
1137 suits directly affected the fund, and it was his duty as I thought to defend it. Owing to the unfortunate discord between the parties, of course there were a great many controversies which brought about litigation which when looked at in detail, some particular case here by itself it may not be considered necessary to bring or necessary to defend; and yet in the condition of affairs in my judgment every case was necessary to defend in behalf of the defendant.

So I have continued in the employ of Mr. Leathe for himself and his beneficiaries in this litigation up to the present time, and I know of nothing that he has paid out or incurred as counsel fees which were not directly connected with the enterprise of building these railroads and developing the coal company afterwards and protecting the fund which came into his hands in consequence of the sale to Judge Gary.

The suits against Mr. Chipley which were spoken of were brought in St. Clair County. One of them was on a note owing to the Crown Coal Company. The other was one for some cash items which he seems to have received from the Crown Coal & Tow Company that amounted I think to $380; and then to recover cash which he had collected from the St. Louis Trust Company, amounting to I think

$592.40 something like that. Now, this note which I speak of belonged I know to the old Crown Coal Company and the accounts which he collected from the St. Louis Trust Company; I don't know whether these were accounts or not by the Crown Coal Company or the Crown Coal & Tow Company; if they were the former they were taken in account as was the note which we spoke of and formed part of the adjudication between the suit of Thomas *vs.* the Crown Coal & Tow Company and also of Bart S. Adams and Taylor against the Crown Coal & Tow Company which
1138 are still pending wherein they charge Mr. Leathe individually or the Crown Coal & Tow Company not only with what they had collected of the accounts of the old Crown Coal Company but what he ought as they thought to have collected. Whether they recovered for the amount or not that part of the note is anyhow a part of the account of the Crown Coal Company, and would in my judgment not be properly charged against Mr. Leathe until he had collected it, except as the President of the Crown Coal & Tow Company, which suit as I have stated had already been brought and litigated.

I am trying to discover whether that $540, or $590 and odd dollars,—I forget the figures,—was a debt owing the old Crown Coal Company or the new company; I don't know that it shows that it was collected from him as something coming from the Crown Coal Company, whether it was before or after the new company was formed I don't know; I have not been able to determine; perhaps Mr. Taylor knows when I call his attention to that.

At this point recess was taken until 2 p. m.

After recess, 2 p. m., Monday August 27th, 1900.

Mr. G. A. KOERNER resumed his statement on direct examination as follows:

As far as I have been able to make up the amount of those two judgments collected by Mr. Leathe as treasurer of the Crown Coal & Tow Company from Mr. Chipley, it is this, that the judgment for $942.43 is properly chargeable to Mr. Leathe in this accounting; and the judgment for $591.40 is not chargeable to him in this but is accounted for and recovered by these parties in their suits
1139 against the Crown Coal & Tow Company either for money collected or money that should have been collected.

Mr. THOMAS:

Q. The judgment on the note is not chargeable to this in this accounting?

A. That is what I said.

Q. That is $567.45 was the amount of the judgment?

A. That was what was collected.

Q. He receipted for $572.; that is not chargeable to this account?

A. That is right.

Q. He ought to have given Bart S. Adams credit for it?

A. The purchasers from Mr. Leathe on January 6th, 1896, paid to the County Treasurer of St. Clair County, $2400 in satisfaction of an award to the St. Louis Alton & Terre Haute Railroad Company and the Tudor Iron Works, in the condemnation suit had by the St. Louis Belleville & Southern Ry. Company against those corporations; and also paid about that time $155.80 as costs in that suit; and on the 30th of June, 1896, paid the sum of $350 to the County Treasurer of St. Clair County in satisfaction of a judgment in the condemnation suit had by the St. Louis Belleville & Southern Ry. Company against the East St. Louis & Carondelet Ry. Company. These were condemnations had before Mr. Leathe sold to Judge Gary, but the amount of the awards had not been paid.

Now Mr. Leathe in his sale made himself responsible for certain things which will appear by the bond which he gave a copy of which if it is not yet in evidence I will file in evidence, the contract and bonds both of them. Under these contracts and bonds these purchasers claimed that Mr. Leathe is responsible for this loss.

1140 Mr. Leathe takes the view that the property not having been cleared did not pass by the sale and consequently he is not bound to pay for it. Now, that is a question perhaps of fact which will have to be determined some way. That makes this claim, and Mr. Leathe does not think that it is a proper claim.

On February 3, 1897, these purchasers paid the sum of $911.15 to the County Treasurer of St. Clair County,—and I will state here that under the law of Illinois persons condemning have the right to pay either to the party who has the judgment or may pay the money to the County Treasurer of the County to the use of that party,—and they chose in all cases to pay to the County Treasurer as the most convenient. This arose out of the following circumstances: Mr. Leathe as he admits was compelled under his contract and bond to give a right of way 66 feet wide to these purchasers through a tract of land known as lot 72 in the commonfield of Cahokia, and intended to condemn this 66 feet, to have them condemn and pay for it, when they discovered that they desired a greater piece of land instead of 66 feet they had to have 150 feet wide at that place, and the condemnation was had in the name of the St. Louis Belleville & Southern Ry. Company for 150 feet. The entire award was $1,942, of which Mr. Leathe is properly chargeable with 66/150 or $854.48, and with the same proportion of costs $56.67; but this amount of $911.15 is a proper charge against Mr. Leathe and he will have to be credited for it because he will have to pay that.

Mr. SMITH:

Q. Why don't you just say this is already charged in his account?
A. I think it is only charged in the contingent claims.

Mr. THOMAS:

Q. It is charged as if it was paid?
A. I think it is charged to the contingent.

1141 Q. It is charged in the account as being paid, and I think all his claims that he has paid and disbursements for the

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Belleville City Ry. Company he adds them up here, shows this amount, and he credits himself with that as having paid it?

A. That is proper.

Mr. SMITH:

Q. The corrected statement has this?

A. It shows that the amount of $854.47 appears in the account filed in this case; as costs $56.67 is a proper credit because Mr. Leathe wil have to pay that.

The REFEREE:

Q. You mean that is a proper further credit?

A. Yes, sir. Then they have in this account proportioned the bill of costs in the County Court, Samuel Leathe estate $25.50. All I say about that is that I don't understand it.

Q. What amount do you speak of, Mr. Koerner, whose account is that?

A. That was transmitted to Mr. Leathe by the purchasers, the St. Louis Belleville & Southern Ry. Company, presented to him.

Mr. THOMAS:

Q. Did they purchase of Mr. Leathe?

A. Mr. Gary purchased it.

Q. Has he presented any account here?

A. Well, his assignees presented it.

The REFEREE: You speak of that as an account which has been filed?

A. It is filed in this case.

Q. It has already been filed has it, or are you going to file it?

A. It is filed August 23, presented here that day; I want to explain what it is. Now this account further charges as follows: paid C. W. Thomas expenses to Springfield arguing case involving accretions to lot 232, Cahokia Commons $10.50. Paid G. A. Koerner for certified copy petition in condemnation case Belleville City Ry. Company against East St. Louis & Carondelet Railroad $1.85.

Paid C. W. Thomas services rendered in perfecting an ap-
1142 peal in case of New York Security and Trust Company against Louisville, Evansville and St. Louis Railroad Company upon Contempt proceedings brought by Jarvis, Receiver against the St. Louis, Belleville & Southern Ry. Company and certain of its servants, a cross-bill of the Receiver all in the Circuit Court of the United States for the Southern District of Illinois, $550.

Paid E. M. Holloway, clerk of the United States Circuit Court of Appeals for estimated costs of printing a record together with the clerks' fees for supervising, etc. in case No. 66, St. Louis B. & S. Ry. Company against E. O. Hopkins and James H. Wilson Receivers. This litigation involved the title to accretions to what is known as the Schneider lot in East St. Louis, $466.

Paid James T. Jones for making transcript for U. S. Circuit Court in above case $85.40.

Paid J. G. Drennan, attorney, for expenses on trips to Belleville

and St. Louis during June and July, 1899, in matter of Schneider *vs.* St. Louis B. & S. Ry. Company $7.60.

Paid C. W. Thomas for expenses incurred in connection with accretion case in the United States Circuit Court for the Southern District of Illinois, $32.

Paid Thomas May, Jr., Clerk of the Circuit Court of St. Clair County plaintiff's cost and attorney's fees and defendant's costs in the case of Schneider *vs.* St. Louis B. & S. Ry. Company in foreclosing mortgage given by Samuel Leathe grantor of defendant to secure payment of purchase money on lot No. 233 Cahokia Commons $270.55.

Paid Charles W. Thomas for services rendered in Court of Appeals and adjustment of boundary line for accretions to lot No. 233, Third Sub-Division of Cahokia Commons in intervention of main
1143 case of New York Security & Trust Company *vs.* Louisville, Evansville & St. Louis Consolidated Ry. Company, United States Circuit Court for the Southern District of Illinois, for reimbursements of expenses to Chicago, $514.50.

This is a corrected account for amount received from E. M. Holloway, Clerk of the United States Circiut Court of Appeals being refund of costs in case of St. Louis B. & S. Ry. Company *vs.* E. O. Hopkins, receiver, in litigation in regard to title to lot No. 233, known as the Schneider lot $360.55.

Now all of these items beginning with the item of $10.50 expenses of C. W. Thomas on the claims as made by these purchases for expenses alleged to have been incurred in litigation concerning this Schneider lot which was the lot belonging to the Belleville City Ry. Company and the title of which presumably was and may have been in his lessor, was guaranteed by the bond of Mr. Leathe. Mr. Leathe entirely denies any liability for himself or for his fund for this account; so far as that is a just claim, so far that ought to be paid, but I don't think it can be paid, and can be recovered against him. But yet the claims are here and it may be that they will sue Mr. Leathe on these claims, are here and it may be that they will sue Mr. because the claim is not a proper charge in these accounts.

The REFEREE:

Q. Do those items appear in any way on this account filed by Mr. Leathe and contested or otherwise?

A. No, it is filed here now as one of the contingent claims. It was only received a few days before it was filed here, two or three days.

Now, in reference to the Schneider lot in regard to which Mr. Thomas claims Mr. Leathe should have paid it before this date, I want to explain why he did not. Mr. Schneider had sold this
1144 lot to the Belleville City Ry. the Belleville & St. Louis Ry. Company first and Mr. Leathe bought it for that company; Mr. Leathe deeded it to the company, to the Belleville City Ry. Company. That was the purpose for which it was bought, for this railroad enterprise. Now, he paid 1/4 cash; he bought it for $10,000 and paid $2,500 cash and gave a note and mortgage for the balance.

Before that became due it developed that the most important part of the lot,—anyhow it developed that the major part of the lot, or at least the most important part of the lot, the river front of it, was in possession of other parties, and the possession could not be and was not delivered to Mr. Leathe or the Belleville City Ry. Company, in which respect Mr. Leathe claimed that there was a failure of title, and he maintained that position and continued to maintain it against any suit that might be brought to recoup for this failure of title. But the time passed; of course he had to pay the interest on the notes; and then about a year ago, in July, 1899, the St. Louis Belleville & Southern Railway Company made a compromise with the adjoining owners by which it got, while not all of its river frontage, as much as they were willing to give and what it was prepared to accept so as to have the river frontage; and then Schneider got his money, he having in the meantime brought a bill of foreclosure. There are no costs charged in this bill of Mr. Leathe's because he did not pay the costs; the purchasers paid the costs, and Mr. Leathe only paid the amount of the note and interest; the costs are charged however against him in this bill which is presented as one of the contingent claims. They are asking him to pay those; the costs amount to $270.

1145 Cross-examination.

By Mr. THOMAS:

Q. Mr. Koerner, you were first employed by Mr. Leathe about the middle of August, 1893?

A. In August, 1893, yes, sir.

Q. I will ask you if you did not go up to the office of Charles W. Thomas the day on which you were employed and ask to look at the books in company with Mr. Leathe?

A. Did I come there?

Q. Yes?

A. I can't answer that, Mr. Thomas.

Q. You met Edward L. Thomas there in the afternoon of that day, about the middle of August?

A. Charles W. Thomas?

Q. Yes?

A. I don't know as I remember.

Q. Don't you remember the circumstances which there occurred on that day when Edward L. Thomas protested against your employment by Mr. Leathe?

A. I don't remember of any meeting of that kind.

Q. Mr. Koerner, did you read what you claim to be the contract of January 24th, 1893?

A. When?

Q. At the time or about the time of your appointment?

A. I hadn't read it then, at the moment of my employment.

Q. I mean about the time or soon thereafter about the time of your beginning to advise Mr. Leathe?

A. I think not; I think the first action taken was taken by you;

I knew nothing about the claims of the parties, in regard to that contract, merely the matter of corporate law.

1146 Q. Let me direct your attention to something; do you remember going with Mr. Leathe to the First National Bank in Belleville on the 27th day of August and tendering some bonds to that bank?

A. I remember going there but whether it was the 27th of August I don't just recall.

Q. Well, had you read then the contract that Mr. Leathe had with the bank?

A. Yes, sir.

Q. And read the contract there with Mr. Leathe?

A. Yes, sir.

Q. That contract provided, I believe, that Mr. Leathe could either return the bonds within 6 months, deliver $25000 of new bonds or pay the indebtedness for which the old bonds were pledged; wasn't that it?

A. That is my recollection of it; yes, sir.

Q. Yes, sir; but you were not aware then as to what Mr. Leathe was going to do with those bonds at the time he tendered them to the bank, in reference to those bonds, I mean?

A. As to the offer for them?

Q. Yes?

A. No.

Q. You don't know anything about that?

A. I don't know about that.

Q. Mr. Leathe did not inform you then of that contract?

A. I don't know just now whether he did or not; I can't remember; I don't think however I saw that contract until long afterwards.

Q. And he did not inform you either of the fact that the bonds were given to him for cancellation, did he?

A. Well, all the conversation between Mr. Leathe and myself I would not be justified in saying anything about, Mr. Thomas.

1147 Q. I don't want to ask you for the conversation; I ask merely for information to find out if you read the contract?

A. I don't think I would be justified in saying what he told me.

Q. You are here to testify, not what you think is the right thing about these cases and expenses of all this litigation, but for the protection of the interests of both of these companies and show the fact that they are chargeable to this fund here; isn't that true?

A. Generally speaking, yes, sir.

Q. Now, Mr. Koerner, if that is so, can't you form an idea as to whether or not you were acquainted with the terms of what Mr. Leathe says is the contract of January 24?

A. I don't think I am justified in saying anything that Mr. Leathe informed me of.

Mr. THOMAS (to the Referee):

Q. Well, I ask that he be required to state?

The REFEREE: I suppose as to this, Mr. Koerner, so far you have given us your opinion on the facts of this litigation and for the

interests of the corporations; it is however neither one way or the other for the interests of these corporations unless you give the facts and statements forming the cross examination; and I don't see how we can proceed otherwise?

A. I will give all the facts so far as he can ask me.

Q. If the facts come from that source?

Mr. THOMAS:

Q. You testified to that now?

A. Well, what is it you want to ask me?

Q. I want you to state whether you knew of the contract of January and what Mr. Leathe calls the January contract, at the time of the delivery of these bonds to the bank?

1148 A. I don't know whether I did or not.

Q. You can't say?

A. No, sir.

Q. You went blindly with Mr. Leathe on this occasion to deliver $90000 of bonds for a loan upon property he had purchased without knowing anything concerning the contract he had entered into in regard to those bonds?

A. Only the contract he had made with the bank in regard to those bonds and that is what I read there.

Q. You knew nothing else?

A. I don't think I did.

Q. You don't think you did?

A. I didn't know all the circumstances until after that time.

Q. If that was so, Mr. Koerner, if that were the fact that Mr. Leathe had made this contract prior to that time and made this contract marked plaintiff's exhibit, August 21st, 1900, C. I say now notwithstanding the fact of this contract and what Mr. Leathe claims to be the contract of January 24th, 1893, you still say that all of the litigation arising out of these matters was in the interest of the companies and carried on by Mr. Leathe for the companies principally?

A. Which arose as I testified out of that.

Q. Arising out of this matter, Exhibit C?

A. Now I will tell you, Mr. Thomas; Mr. Leathe at that time could not possibly comply with his contract, with that option in the contract to deliver new bonds, because they had not been issued.

Q. We will get to that; you know that the bonds had not been issued?

A. Yes, sir.

Q. You know they had not been prior to that time, but had been prepared (?) apportioned prior to that time, long before this?

1149 A. In August, 1893.

Q. Yes, sir, about the first of August, 1893?

A. It seems to me not; now wait a moment and allow me to refresh my recollection on that.

Q. You prepared them afterwards, don't you remember; that Charles W. Thomas had them prepared and informed Mr. Leathe he was ready to execute the assignment?

A. Wait a moment, please; let me look at that; not about the Crown Coal & Tow bonds.

Q. I am talking about the railroad bonds?

A. My impression is that Charles W. Thomas had prior to that time prepared bonds or resolutions for bonds, but they required changes and I made some changes.

Q. Oh, no doubt but you made changes, Mr. Koerner?

A. If I made it it was in August, in the bonds.

Q. I have no doubt you made changes; that is all right?

A. So the bonds were not ready to be delivered and that is correct; I don't think the bonds were delivered at that time, they were not in shape to be delivered.

Q. Don't you know that they had been signed by Mr. Leathe and by Charles W. Thomas, and that the only question in connection with the bonds was simply signing a mortgage about the 27th day of August, 1893?

A. I don't know that.

Q. You don't know that.

A. No, sir; my impression is different.

Q. Well, you are mistaken in those matters. Now, Mr. Koerner, you knew Mr. Leathe's relations at the date of August 24th, the plaintiff's exhibit August 21st, 1900, B?

A. You mean by this letter.

Q. Yes?

A. My impression is, Mr. Thomas, that I did not learn
1150 about any of the relations *inter sese* between you and Mr. Leathe and the other stockholders until somewhat later than this, because this happened on the 24th of August, very shortly after I had been employed in the case.

Q. So that now without any knowledge as you say of the circumstances you testify here that these cases that were brought by Edward L. Thomas at the September term, 1893, were such that the defense of them by Mr. Leathe was proper and in pursuance of the protection of the fund of the companies?

A. Those suits were brought against the companies, Mr. Thomas.

Q. I understand; but you say now that not knowing anything of the circumstances after all, are you willing to say now they were brought in the interests of the companies and defended in the interest of the companies?

A. At the time they were brought it was against the company itself and had to be looked after.

Q. Yes, had to be looked after; but you were not aware then at all, sir, of the fact that he had agreed to put $25000 of the railroad new bonds into the possession of the bank prior to the 27th and by the 27th day of August, 1893, and yet not being aware of the fact,——

A. Yes, I was aware that he made that arrangement you name.

Q. And do you say that knowing that was the arrangement, do you see now that this litigation was proper to be defended by him or that he had shown his faith in having it brought?

A. That litigation, I think so.

Q. Litigation in regard to the farm land of Mary O. Thomas?

A. That was against the company, Mr. Thomas.

Q. Well, but, Mr. Koerner, what I am trying to get at, I
1151 am talking about what is justly chargeable now to the company by this litigation, that is to say properly by Mr. Leathe?

A. Why, surely it was litigation of the company.

Q. Yes, but if it was Mr. Leathe's fault in non-compliance with his contract that is chargeable to himself?

A. No, we are not any further together.

Q. What was the situation of that now?

A. He was president of the company and continued to defend all litigation against the company.

Q. Isn't he also now?

A. That may be, if you had brought your suit, if you had an agreement with Mr. Leathe why your suits against Mr. Leathe might have been of a different character; but this was not against Mr. Leathe, it was against the company.

Q. Any suit brought against Mr. Leathe, would not be chargeable by him to the company then?

A. In regard to the company if they have had any litigation bearing upon the company or that was connected with the company.

Q. If it was a contract growing out of this company and that the company had made and violated I don't say that that charge ought not to be against the company?

A. Any suit against him on the contract he had made and violated of course ought not to be charged against the company.

Q. You say in your direct examination that all of this litigation was in defense of the interest of the company and for the benefit of this company and the beneficiaries?

A. I so intended.

Q. Will you tell the Referee how and in what manner the suit with the First National Bank against Mr. Leathe could be in any manner chargeable to the Company?

1152 A. That is something that arose out of his connection with the company.

Q. Didn't it arise out of the violation of the contract by Mr. Leathe with that bank you just spoke of?

A. He did not violate it.

Q. Didn't he tender the bonds?

A. He did.

Q. Didn't he then take them off and didn't they refuse to take them back?

A. They did.

Q. Didn't they request they be turned over to it?

A. No, sir; sometime after they wrote to him they would receive them.

Q. And that he bring them to them; did he do it?

A. No, he did not.

Q. They sued him for that, didn't they and recovered?

A. Yes, sir.

Q. Now, do you say that was a litigation that ought to be chargeable to this fund?

A. Well, but this,——

Q. Answer the question, Mr. Koerner; do you say now first; then you can explain it afterwards, do you say that is a litigation which must be chargeable to this fund?

A. In the case of Leathe against,——

Q. The National Bank against Leathe?

A. Yes, of course I am not the judge of that.

Q. You were the judge just a little while ago, Mr. Koerner, on your direct examination?

A. Well, I said that is a matter that arose directly from the fact of his connection with this enterprise.

1153 Well, then you now state,——

A. And that he held them in that way.

Q. You mean to say then and have said in your direct examination and you mean to be understood as saying then that this fund is responsible for all of this litigation and that it arose directly out of those transactions?

A. Well, one followed from the other.

Q. One followed from the other; you are willing to say then that case, this particular one, that that case of the National Bank against Leathe is chargeable to this fund?

A. I should think so.

Q. Oh, you do?

A. Yes, sir.

Q. The fact is, however, the fact remains that in the case of the First National Bank against Leathe about these bonds, that he had refused to surrender them and that they did sue him and did recover?

A. It recovered and you paid the judgment.

Q. I didn't pay the judgment.

A. Mr. Gary paid it for you.

Q. He didn't pay it for me; don't say anything of that kind, because that ain't the case?

A. I beg pardon he paid it out of the $50000.

Q. There never was any $50000 paid to Charles W. Thomas; you know that well enough?

A. I know there was $50000 paid to him.

Q. Did you see it paid?

A. I saw him have the check, yes, sir, a check for the amount of $50000 after deducting the amount of the judgment.

Q. You saw the receipt to Gary?

1154 A. I don't know; I never saw it.

Q. You never saw that?

A. Maybe I did.

Q. You don't remember that?

A. I don't remember a receipt; I don't remember whether I saw it or not.

Q. Now, you say he received $50000; do you say he received more than that?

A. I say he received that much; if he got any more I don't know.

Q. We will not go any further, Mr. Koerner. Now, at the September term, 1893, the case you say of Edward L. Thomas against the Belleville & St. Louis Ry. Company was brought, or the St. Louis & Belleville Ry. Company?

A. Yes, sir.

Q. What connection had Mr. Leathe with that company?

A. His connection was this, he had made the contract with the gentlemen while that was the company which was intending to build the railroad.

Q. It was the contract at that time?

A. Well, I don't know; you are asking me now I don't know what it was.

Q. Do you know whether he had made a contract for that or not?

A. I know it now.

Q. I ask you if he did not sign it at that time?

A. No, I don't know; I heard that later; he hadn't signed it at that time.

Q. I am asking you as to his connection now?

A. I was going to tell you.

Q. Go on with your explanation?

A. That was the road which you had incorporated and which you had tried to build, the road in Belleville, between Belle-
1155 ville & St. Louis, and the one in which you got Mr. Leathe interested, in which the contract of January 24th, 1893, was made.

Q. Well, go on.

A. Well, then afterwards it was thought best to purchase the charter of the Belleville City Ry. Company and build a road under that name instead of the name of the Belleville & St. Louis, and that name was adopted without as I understand it changing the contract between the parties.

Q. Now, then, Mr. Koerner, you don't know anything about it; you are merely speaking about that on information from Mr. Leathe, without changing the contract?

A. From information I got among people generally; I think I have answered that question.

Q. Don't you know Mr. Leathe never had any stock in the Belleville Ry. Company?

A. I know the contract provided for stock to him.

Q. Was any ever assigned to him, or did he ask to have it assigned?

A. He was represented in the Belleville City Ry. before the stock was issued.

Q. So that at the time of this litigation Mr. Leathe had no interest whatever in the Belleville & St. Louis Ry. Company?

A. I have stated what interest he had.

Q. Hadn't the Belleville & St. Louis Ry. Company conveyed all of its property to Mr. Leathe prior to that time?

A. Yes, sir.

Q. And hadn't Mr. Leathe conveyed his property by deed to the Belleville City Ry. Company?

A. Well, about what time?

1156 Q. Prior to that, September, 1893?

A. Yes, sir.

Q. Isn't it true, Mr. Koerner, that in that suit brought by Edward L. Thomas against the Belleville & St. Louis Ry. Company, that notice was given to Mr. Leathe to defend it individually?

A. I believe so.

Q. Yes, sir; didn't you go in upon that notice and defend it?

A. Before that notice was received I proposed to defend it on behalf of Mr. Leathe and Mr. Chipley as stockholders of the Belleville City Ry. Company which in my judgment was the same as though asking to defend for them.

Q. Had you any right to defend for the Belleville & St. Louis Ry. Company?

A. I was going to try a ground of defense; afterwards we had notice we might defend it, and so Mr. Leathe did defend it in behalf of the Belleville City Ry. Company.

Q. He did; he brought suit in his own name, didn't he then to enjoin.

A. In his name and in that of the Belleville City Ry. Company I believe.

Q. Belleville & St. Louis Ry. Company didn't he?

A. Now, let me have that, there is a record will show that; I know the Belleville City Ry. was one of the complainants.

Q. You mean that there was a suit brought at the same term by the Belleville & St. Louis Ry. Company against the Belleville City for a vendor's lien?

A. Yes, sir.

Q. And that the object of the defendant in this suit of Edward L. Thomas was to get rid of that case?

A. No, I don't say that.

Q. Do you say that was the main object?

A. No.

Q. And that you enjoined, filed a bill to enjoin his pro-

1157 ceeding in the case in that suit?

A. I said that the sting of the litigation fell out (for you) in my judgment.

Q. Did you file a bill to enjoin that case?

A. To enjoin that law case.

Q. Did you file a bill to enjoin the case of the Belleville & St. Louis Ry. against the Belleville City?

A. I don't think that was done, because that was the vendor's case enjoining you know.

Q. Well, do you say that was a vendor's case?

A. That lien, a vendor's lien, yes, sir.

Q. Then you went to work and after that was dismissed you say that the sting fell out then?

A. Yes, sir.

Q. Well, on the trial of the case as far as the evidence was concerned and argument, after that the case was dismissed?

A. The case should have been dismissed.

Q. Was all the evidence offered on the trial?

A. I don't know.

Q. Wasn't that dismissed the first day of the trial?

A. It wasn't the first day of the trial; whether the first or second day I don't know.

Q. You won't say that the trial of this case was a week or ten days?

A. It didn't take that long.

Q. Didn't take that long to take the evidence; were you aware of the fact the trial lasted from the 6th or 8th of December to the 21st of December?

A. Well, that was in 1893, I don't remember.

Q. Now, Mr. Koerner, was that a suit to prevent Edward L.
1158 Thomas from getting judgment against the Belleville & St. Louis Ry. Company for what he claimed was due him on account of money expended in the construction of it up to the time that it was deeded to Mr. Leathe; is that right?

A. That was the general purpose of the bill, Mr. Thomas. Now, its details and particular portions if you want to know them you will have to look at the paper.

Q. That was the general purpose of the bill?

A. The general purpose of the bill was to enjoin them, yes, sir.

Q. Was it detrimental to the Belleville & City Ry. Company, any detriment in a suit of Edward L. Thomas against the Belleville & St. Louis Ry. Company for what that Company owed him?

A. Well, yes, I thought it might be.

Q. You thought it might be?

A. Yes, sir.

Q. In what way?

A. If not to that Company it might be to the parties in interest with Mr. Leathe.

Q. In what way?

A. Why, in the way,—I didn't know what shape that lien would get in afterwards, strengthen the scope of that lien was paid in the enforcement of the contract of January 24th, 1893.

Q. How could it affect anything in the suit of Edward L. Thomas against the Belleville & St. Louis that could have affected in any way the contract of January 24th, 1893?

A. Well, I didn't know but it might.

Q. Then you advised Mr. Leathe to go into an injunction to enjoin the recovery of that judgment upon your supposition that it might possibly injure the interests of the other company?

1159 A. I thought at that time that it was the proper thing to do.

Q. Now, do you think that that charge for that litigation is a proper charge against this fund?

A. If you want my opinion of that you can have it.

Q. You have given your opinion heretofore in your direct examination?

A. I said that the litigation was all connected with the railroad and coal companies.

Q. Didn't you say also that it was all chargeable to this fund, a proper charge against this fund?

A. I don't think I made use of that expression, Mr. Thomas.

Q. Then, is it a proper charge against the fund?

A. That is claimed, yes, sir, I think so in my opinion.

Q. The case of Edward L. Thomas as you have since learned against the Crown Coal & Tow Company,—that is not the style of that; I want to go to the case here in 1893. In 1893, after the trial of the case of Edward L. Thomas against the St. Louis & Belleville and your injunction suit, was there any litigation after that pending against this company, and if that was concluded by the decree and judgment of the Court?

A. I cannot undertake to say what this means. Well there may have been possibly some undetermined of them for any cause pending about January.

Q. Were you present at the meeting of the Crown Coal & Tow Company on March 1st, 1894?

A. I think I was.

Q. Do you remember a resolution that was offered there that the company were to take Mrs. Thomas' particular lands or deeded to them for which the contract was made?

A. I don't remember it, but read it.

Q. And that they were to pay certain mortgages, do you remember?

A. If there is such a resolution.

Q. They were to pay two mortgages, were they not?

1160 A. I will look at the resolution.

Q. The Gundlach mortgage and the Anthony Pfeiffer mortgage, which is in this book there; I don't think you got it in the printed record; the same proceedings March 1st, 1894?

A. I know there was a resolution passed about that time. Well, now there it is; I will just read it: "Whereas this company now holds the southwest quarter of section 11, township 1 north range 5 west of the third principal meridian containing 9½ acres acquired by Phillip Schaefer and Edward and Sylvester McDonald; and whereas Mary O. Thomas from whom the same was purchased has obtained a decree for the purchase money of said land against this company, which decree is now in force; and whereas the settlement of said indebtedness has been arranged; now therefore be it resolved that the president and secretary of this company be directed to convey to said Mary O. Thomas the equities in said land, said deed being made in pursuance of a settlement this day made by the president of this company with said Mary O. Thomas and it is hereby approved by this board. Which motion was seconded and adopted."

Q. Yes, sir; now then?

A. I don't see anything about mortgages.

Q. Now, that is March 1st, 1894?

A. Yes, sir.

Q. Now, Mr. Koerner, the deed to the property as you know provided that the mortgage of Phillip M. Gundlach and the mortgage of Anthony Pfeiffer should be paid by the company; you remember that, don't you?

A. The deed?

Q. Yes, sir; that deed that is here spoken of; you remember the deed that was in the Gundlach case, you know about that, don't you?

1161 A. The company made a deed to Mary O. Thomas.

Q. Yes, by which it agreed to pay these two mortgages mentioned?

A. I think that is so.

Q. Yes, sir; well, now, did you hear anything said at this meeting of March 10th, about these bonds, the distribution of these bonds?

A. I undoubtedly heard something said, yes, sir, I was there, and this resolution was passed.

Q. Did you hear Mr. Thomas make a statement that he did not want anything put in the way of his getting his portion of the bonds?

A. I don't recollect that, Mr. Thomas.

Q. Don't you remember that Mr. Leathe said he would give his word of honor that I should have them?

A. No, sir.

Q. Don't you remember that I refused it, and then Mr. Holmes said he would give his word of honor?

A. No, sir.

Q. You can't remember anything of that at all; could you say it did not take place?

A. I say if it did take place, if I heard it I have forgotten; I didn't hear that; I don't know that.

Q. You have forgotten?

A. I don't know that it occurred.

Q. You have forgotten that occurrence?

A. I don't say I forgot; I say I don't know anything about it.

Q. Now, Mr. Koerner, the company not paying these two mortgages but permitting them to be foreclosed and making no defense to them, Mr. Leathe buying the certificate in his own name, in your opinion you say that the charges made in the defense of those foreclosure mortgages under those circumstances and the purchase of those notes by Mr. Leathe would be chargeable to this fund?

A. Well, I don't remember just what reasons they were for defending against those mortgages, but it certainly grew out of

1162 some misunderstandings or controversies between you and Mr. Leathe as the president of this company, and there were suits against the company, and whatever the company paid of course is chargeable to the company.

Q. But, Mr. Koerner, Mr. Leathe took an assignment of them in his own name and permitted the title to develop in himself I will state that to you?

A. For that he ought not to charge anything.

Q. He ought not to charge anything?
A. In getting title in himself.
Q. If he took an assignment of them, took it in his own name, it would not be for the company?
A. Well, sometimes an officer of the company does that you know anyhow.
Q. Oh, he does?
A. Yes, sir; I think the result was the company paid the judgments.
Q. Maybe you can learn a reason for this. In the spring of 1894, after this settlement was made, after Mr. Leathe procured these bonds, after this agreement was made do you remember Mr. Leathe procured and purchased a judgment against Edward L. Thomas and levied upon property of Edward L. Thomas?
A. There were one or two judgments purchased.
Q. Who purchased the judgments?
A. The Belleville Savings Bank I think..
Q. And didn't you purchase one also from Shapleigh of St. Louis, and Mr. Diel made the assignment in the County Court?
A. I would not say I didn't; I don't remember.
Q. Didn't you get Holder, get him to issue an execution on the note that Mr. Leathe had in suit here and he got his money on it?
A. Well, I think there was a purpose to acquire your stock by the sale.

Q. Expecting that I could not redeem it?
1163 A. I don't know; his object was this, his purpose.
Q. Didn't you so advise Mr. Leathe?
A. No, sir; you mean as to your ability?
Q. Yes, sir, to pay these things?
A. I didn't advise him as to that.
Q. Didn't you then get by this paper some claims of Mrs. Underwood and make an agreement in respect to that of some $3000?
A. I don't remember.
Q. Don't you know that too?
A. I?
Q. Yes, sir, you?
A. I don't remember that.
Q. You don't remember that? Didn't you get Mr. Gundlach to come up into your office and attempt to purchase from him this claim that the Crown Coal & Tow Company agreed to pay for Mr. Leathe?
A. You mean these mortgages?
Q. Yes, sir?
A. I think I had some talk with Mr. Gundlach about purchasing this mortgage.
Q. Yes, for Mr. Leathe, not for the company?
A. Well, I don't know whether it was for Mr. Leathe I purchased.
Q. Wasn't it with a view, Mr. Koerner, to get these claims of myself and my wife in such a way as to cut out all the interest absolutely that I had in the railroad and coal companies?
A. It wasn't for Mr. Leathe's benefit I don't think.

Q. Why not; you had the money, Mr. Leathe was the company?

A. He would have defended it because the company had no money.

Q. Why did the company, what action had the company taken through its board of directors that made it necessary for you as attorney of the company to proceed to clean me out of my interest in the company?

1164 A. I had no directions from the board of directors; I took my directions from Mr. Leathe.

Q. You took your directions entirely from Mr. Leathe?

A. Yes, sir. If there was any direction by the board of directors I don't have any recollection of it.

Q. Then having attempted on the advice of Mr. Leathe to destroy my interest in the company as president of the company, when this failed entirely you then made charges against the company as attorney knowing that the directors of the company had made no directions to Mr. Leathe, you done such a thing as that, and that is charged in this account; that is true, Mr. Koerner?

A. My bill is for services against the company.

Q. Mr. Koerner that is included in this litigation that I have been drawing your attention to?

A. That is prior to the arbitration, Mr. Thomas?

Q. Yes, sir?

A. Yes, sir.

Q. It includes this, doesn't it?

A. Whatever there was in that, yes, sir; there was a good deal of litigation about that Mary O. Thomas farm.

Q. On what ground,—you have been talking in your direct examination Mr. Koerner of theories you know a good deal,—on what ground would the procurement of a judgment against Edward L. Thomas and the sale of his interest to Mr. Samuel H. Leathe tend to protect the interests of Mr. John T. Taylor in the fund?

A. I don't think there is any charge made in regard to that.

Q. Don't you set out a charge for your services on that farm here against the two companies, and all the services you ever performed here that you charge against the companies is for advice and services for the officers of the company, you have a $5000. charge; you have a $5000 charge that you charge for advice from time to time to the officers of the company and for services performed for the

1165 officers of the company during this time? Now, you say you performed those services for Mr. Leathe as officer, president of the Crown Coal & Tow Company and the Belleville City Ry. Company; you must have charged him?

A. What case are you talking of now?

Q. The services in securing judgment against me and procuring others to prosecute against me?

A. That was such a very small service I probably didn't take any notice of it at all.

Q. And you don't charge him there now; then you have included this in those transactions?

A. That is all of those transactions.

Q. These purchases of judgment notes and claims against me was

for the purpose of getting my interest out of the company as you have testified, and do you mean to say that you charged nothing for that to Mr. Leathe?

A. You are now asking about my conversation with Mr. Dill, asking me the same thing over again. It is a very little thing I did about it. I may have at the request of Mr. Leathe asked the Belleville Savings Bank to sell them to Dill, though I don't remember whether they did or not.

[On the margin:] This can not be correct.

Q. Don't you remember that you went to the Belleville Savings Bank and procured them to bring suit or to have it done?

A. No, I think not; I think perhaps I told them that they could get their money quickest after they had their judgment; I don't think I went to them before.

Q. You went to Mr. Holder and told him the same thing?

A. Mr. Holder was their attorney.

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Q. No, surely, this was Mrs. Emge against me?

A. I think that Holder was the attorney for the Belleville Savings Bank.

1166 Q. Turner & Holder?

A. Yes, sir.

Q. And you went to Holder about this the execution then being in the hands of the officer?

A. I didn't remember the fact at all, until you mentioned it, but I remember the fact now.

Q. Then you procured Mr. Needles to bring suit too, didn't you?

A. I don't know that.

Q. You don't know that; for all advice you have made a charge including that kind of work; you have made a charge against this company of $5000 and Mr. Holmes has supplemented that with another charge of $6000 for the same services?

A. This kind of work?

Q. Yes, sir?

Q. Now, Mr. Turner, you tried the arbitration case over here you say?

A. Yes, sir.

Q. Did you hear Mr. Leathe swear in that case?

A. I did.

Q. Did you not testify in that case that you had a contract with him for your services for the companies?

A. Well, I think he said that at first when he came to me there was a contract, but it immediately developed or soon after developed that it was impossible to proceed under the contract as it was drawn.

Q. Then he made a contract with you for the companies?

A. That was about a correct statement of it; that is about a correct statement of it.

Q. Now, then, the question of employing you by Mr. Leathe; you were present at every meeting of the board of directors of both these

companies from the middle of August up to the 8th of No-
1167 vember, 1895; that was never submitted to the board of directors, was it?

A. No, sir.

A. I don't think it was, at least I don't know of any resolution about it.

Q. Don't you know that Mr. Thomas was opposed to your employment?

A. No, sir.

Q. You don't; Don't you know that Mr. Taylor was opposed to your employment?

A. No, sir.

Q. Do*d*n't you know that?

A. No, I think later he was.

Q. Don't you know that Bart Adams was opposed to your employment?

A. No, sir.

Q. And don't you know that Edward L. Thomas was opposed to your employment?

A. I presume so.

Q. Now then knowing that one of the directors was opposed you never submitted or had submitted the question of your employment to the board of directors of either one of those companies?

A. If I submitted it?

Q. You never did, did you?

A. Oh, yes, I was employed by the president and the employment is good.

Q. But the president had no authority from the board of directors to employ you?

A. I presumed that he did if he has any authority to do so.

Q. You presumed, or don't you know that during your time there he asked leave of the board of directors to employ a superintend*a*nt of the railway?

A. No, I don't know that.

Q. Your recollection, Mr. Koerner, is not very good, is it?

1168 A. I thought I always had a good recollection; there are certain things. I think there was a hitch about his appointing Stephens as manager.

Q. Yes, and Mr. Stephens wanted to be employed as general manager on a salary to be fixed by the president himself?

A. That was afterwards rescinded, wasn't it, immediately at the next meeting.

Q. No, sir, it was not rescinded?

A. I thought you read this, this morning.

Q. And when Mr. Chipley was made general manager of the coal company, violating our agreement, then Mr. Leathe voted under a protest. Now, Mr. Koerner in the trial of that case, the arbitration case, did you go to Don Turner, attorney at Belleville, during that time and desire him to attend to the trial of that case for the purpose of impeaching Mr. Leathe for veracity?

A. No, sir.

Q. You did not? Did you say to Don Turner at that time words

to this effect, that you had never known a bigger liar or damned old liar than Leathe?

A. No, sir.

Q. You did not? Well, were you present at any time in the last 6 or 8 months with Edward L. Thomas and Don Turner in Don Turner's office when Don Turner stated to you what you said and you said that was all right, that the conditions were different?

A. Some joking remarks there occurred in the office.

Q. Now, Mr. Koerner, we will get down to the case again?

A. I will say I had Mr. Turner over here as a witness.

Q. And didn't you express to him the view that Mr. Leathe could not be believed under oath?

A. Oh, no.

Q. Don't you recollect as to that?

1169 A. As to the value of the services of the attorneys, Mr. Turner testified in that case.

Q. Mr. Turner could not testify that he could not do so because he was acquainted with Mr. Leathe's reputation?

A. No, sir, we never had any such conversation.

Q. I will have to contradict you this time? Now, Mr. Koerner, P. M. Gundlach, there was a suit in this litigation by Samuel C. Churchill against the railway and against Leathe and Thomas upon a mortgage upon what you call lot 72 in the commonfields?

A. Yes, sir, I remember that.

Q. You remember that suit?

A. I do.

Q. That was for foreclosure of the mortgage?

A. Yes, sir.

Q. It was foreclosed?

A. Yes, sir.

Q. And sold?

A. Yes, sir.

Q. Do you know that Mr. Leathe purchased that certificate in his own name?

A. I think I do.

Q. And you knew that he assigned it to his son Sam?

A. Well, I believe he did after that, about the time that I think he assigned it to Mr. Samuel Leathe, after the property was already taken there.

Q. You don't know anything about it then; you did not advise it, did you; you didn't advise that course?

A. There was no purpose in that course that I know of.

Q. Well, can you say why such a proceeding as that took place if there was no purpose in it; you knew that this property had been conveyed to the Belleville City Ry. Company, didn't you by Mr. Leathe?

A. Yes, sir, I believe the Belleville City Ry. wanted to have

1170 the right of way; they did not want the property.

Q. Do you know the agreement made respecting it?

A. Between who?

Q. Between Mr. Leathe and myself?

A. As to lot 72?

Q. Yes, sir?

A. That you got something; according to my recollection of that it seems to me there was something I don't recollect exactly.

Q. Well, now, then if there was an agreement after this property had been transferred to Mr. Leathe by Mary O. Thomas and husband with this mortgage on it and an agreement that Mr. Leathe should pay off the mortgage and use such property as might be needed for the railroad company and turn the rest over to Mary O. Thomas, and Mr. Leathe refused to pay off the mortgage and purchased the certificate of purchase and assigned it to his son Sam, do you think that the litigation growing out of that was a proper charge against this fund?

A. Well, I can answer the supposititious case that as far as the railroad company was concerned I know this was the purpose of the railroad company; if I advised anything I advised the railroad company to get the right of way out of this as cheap as they could.

Q. After they had all the lands?

A. Well, it was to the interest of the railroad company to get what they needed.

Q. Don't you know that Mr. Leathe had transferred this property to the railroad company?

A. You speak now of the Mary O. Thomas property.

Q. The property transferred by Mary O. Thomas to Mr. Leathe with that agreement?

A. That he should transfer it to the railroad company.

Q. And don't you know that he did transfer it to the railroad company?

A. By deed?

[On the margin:] There is no such property. Yes there is.

1171 Q. Yes, sir, by deed?

A. I believe he did, that whole property or right of way.

Q. The Ridgley property?

A. Well, I think that lot 72 is in the original deed.

Q. Yes, in the original deed to the Belleville City Ry. Company from Mr. Leathe?

A. Yes, sir, I think so.

Q. With the Schneider lot and all that property?

A. Taking that property needed for the right of way by the railroad company.

Q. Then Mr. Leathe refused to pay off the mortgages and permitted that to be foreclosed, he being named trustee of the mortgages and trustee for those notes, and taking the assignment of it in his own name for the certificate of purchase and assigning it to his son Sam; that litigation growing out of that you say is properly chargeable to this fund?

A. I don't know as to the assignment to his son Sam; as long as he was president of the railroad company, and the railroad company had a deed to it, of course I can't say whether he wanted it or not for the benefit of the railroad company.

[On the margin:] This is all nonsense.

Q. He didn't want to; it would require new men?
A. There was no such occasion.
Q. Did he ever assign it to the company or did he lease it?
A. He had no opportunity to deed it because it was redeemed afterwards by your creditors.
Q. Now, he permitted it then to go out of the hands of the company, didn't he?
A. He could not hold it.
Q. Couldn't he hold it by paying the mortgage?
A. If he did he would have to pay it out of his pocket.
Q. He did pay it out of his pocket, Mr. Leathe did?
1172 A. The railroad company had no money.
Q. Do you say that this litigation arising out of this affair under those circumstances is a proper charge against the fund?
A. If it was a litigation against the railroad company it was; as far as it was any part of litigation against Mr. Leathe, it would not be.
Q. Now, Mr. Gundlach as you understand redeemed this property?
A. Yes, sir.
Q. He brought suit for forcible entry and detainer?
A. Yes, sir, against the railroad company I believe.
Q. Yes; you came into that suit with a petition for certiorari?
A. Yes, sir.
Q. Now, you stated that the title to that property was in Samuel Leathe, didn't you?
A. What I stated in the petition will show; I can't remember every petition I filed.
Q. You took the certiorari petition and procured Mr. Samuel Leathe to make oath to it, did you not?
A. Well, the petition for certiorari there ought to have an oath; I didn't have to procure anybody to make the oath.
Q. Without stating a great deal of what occurred in the office of Martin Medart, Justice of the Peace, you know that Mr. Samuel Leathe was not present there at any time during the time of that case, don't you?
A. Martin Medart, yes, sir, the trial was before him.
Q. Mr. Samuel Leathe was not present at any time during that, was he?
A. Well, I don't really know, I don't recollect.
Q. Didn't you know that he was not?
A. *O* don't know whether he was or not; I don't believe he was.
Q. You don't believe he was; now, then, he made this on information, I believe.
1173 A. The paper will show.
Q. If he did make it on information,—I will give you all the chance you want—if he did make it on information in that suit there, he made it on your information, didn't he?
A. Very likely.

Q. Yes, sir. Now, when you got it into the Circuit Court, there was a motion made to dismiss?

A. The certiorari or quash.

Q. The motion to quash the certiorari?

A. Yes, sir.

Q. Now, one of the grounds of that motion was that it was sworn to on information and belief, is that right?

A. That might be, I don't recall it.

Q. You recall so many things, Mr. Koerner, that it does seem to me you would be able to recall a thing like that?

A. All these little litigations I can't recall what the grounds were.

Q. Didn't you file an amended affidavit for the purpose of overcoming one of the grounds?

A. Well, now, I don't know that; if I did it is easy to verify it, the affidavit will show it.

Q. I know that the papers will show it there; did you get it done?

A. Well, I was the only attorney in the case and whatever was done in that case is mine.

Q. Didn't you talk it over and draw up an affidavit and get Mr. Leathe to sign it and swear to it?

A. I probably did if there was an amended petition filed, I probably drew it, that petition, and Mr. Leathe was not in the office at the time I drew it I don't believe.

Q. You got Mr. Samu*e*l Leathe to sign it, didn't you?

1174 A. Perhaps I did get Sam Leathe to sign it; whatever it stated was certainly true.

Q. Now, then, that was quashed, you think that time?

A. It was quashed; I don't think it ever went to trial on the merits of the case.

Q. When it was quashed on motion, you took an appeal?

A. I think I did.

Q. The case was decided against you in the Appellate Court?

A. I think so, yes, sir.

Q. Then there was a suit brought by Gundlach?

A. Yes, sir.

Q. Meanwhile you condemned, while that was pending in the Appellate Court you condemned, didn't you against Samuel Leathe?

A. Well, I did condemn; whether it was in the meanwhile or afterwards I don't know, for the Belleville & St. Louis Ry. Company Southern for the right of way.

Q. I will ask you if you did not in the petition assert that Samuel Leathe was the owner of the property?

A. The petition may so state it.

Q. You drew it?

A. Possibly.

Q. Don't you know it was not true?

A. Well, I know that there was a question of the title; I don't

know that was a petition drawn by the St. Louis Belleville & Southern Ry. Company.

Q. You drew it?

A. I drew it, yes, sir.

Q. Don't you know that the statement that Samuel Leathe owned it was not true?

A. I know that there was a question about that, Mr. Thomas.

Q. Don't you know that Sam Leathe's title was a tax
1175 title derived from the purchaser?

A. Yes, sir.

Q. Yes, sir, that Mr. Leathe swore was not and could not have been the case other day?

A. I don't know about that.

Q. You didn't hear him testify then the other day?

A. Yes, sir, I did hear him testify the other day about the two different tax titles. I was going to make a memorandum as to them, but I find I have not done it.

Q. Now this suit of Gundlach was on the appeal bond for the possession, wasn't it, for the right of the property that was not taken by the railroad in the condemnation?

A. At sometime later, Mr. Thomas.

Q. This $200 and some dollars is not a proper charge against the railroad is it?

A. It was a suit against the railroad company on the railroad company's property and whatever services were rendered therein should in the first instance be charged against the railroad company.

Q. I am not talking about the first instance, Mr. Koerner, I am talking about being chargeable to a fund in the hands of a trustee under these circumstances, he having caused that litigation is that right?

A. Well, the balance of it, as to the balance.

Q. Then you admit the facts I have detailed to you?

A. I have not admitted anything; I have stated what the facts were as far as I knew them.

Q. Then, taking those facts as you say you know them, you think this is a proper charge against this fund?

A. As between Mr. Leathe and these people?

Q. Yes, sir?

A. Well, it was not a proper charge if Mr. Leathe in-
1176 tended to hold the property as against the railroad company; but if he was to hold it for the railroad company it would necessarily be a proper charge.

Q. You have said now, Mr. Koerner, that you drew a petition in which you stated that Mr. Leathe was the owner of this property?

A. Yes, sir, he held them as the legal owner, yes, sir.

Q. And you wanted to condemn his interest, did you?

A. Yes, sir, that interest; I made both parties defendants, both parties claiming the title I made both defendants; we had to in the condemnation case.

Q. But you allege Mr. Leathe was the owner?

A. Possibly I did, Mr. Thomas; I allege that the other parties were too.

The REFEREE: Who was the other parties besides Mr. Leathe?

A. Mr. Thomas I think.

Q. (To Mr. Thomas.) He said he made you a party?

The WITNESS: Mrs. Thomas and Mr. Thomas, and Mr. Leathe both appeared to hold titles of record and both were made parties defendant as they had to be.

Mr. THOMAS:

Q. Well, that ain't the point. After the award was made, Mr. Koerner, didn't you advise Mr. Leathe to procure another trial to show that the property or the award should go to Samuel Leathe?

A. I think Mr. Samuel Leathe had employed Mr. Merrills for that purpose.

Q. Through your advice?

A. I am not prepared to say whether I advised him in relation to that matter or not or whether we discussed it; I don't think I ever spoke to Samuel about it.

Q. Now, then that brings us down, Mr. Koerner, to the day of the sale, November 8th, 1895. What litigation was pending
1177 at that time, Mr. Koerner against any of these companies for any purpose.

A. Well, your suit against Mr. Leathe in the United States Court was pending.

Q. That had been determined at that time against me in the United States Court, had it not?

A. I don't know it had been determined; it was still pending in the Court, and held up for a good while, you know without deciding, and I don't know whether the decision had been rendered or not.

Q. There was also a case pending by Edward L. Thomas against the Crown Coal & Tow Company, John T. Taylor and Bart S. Adams for an accounting, wasn't there?

A. Well, I think that was pending at that time.

Q. Was there anything to hinder Mr. Leathe,—Mr. Leathe defended that case, didn't he?

A. The latter case?

Q. Yes, sir.

A. Yes, sir.

Q. Was there anything to hinder Mr. Leathe from filing a cross-bill in that case and having all of these matters determined?

A. I don't know whether there was or not.

Q. You don't know whether there was or not; you were his attorney?

A. Yes, sir.

Q. You had been with him from 1893?

A. I had been employed ever since 1893.

Q. You were fully acquainted with it or learned all of the circumstances at that time, November 8th, 1895?

A. Yes, sir.

Q. I filed immediately after that a supplemental bill setting up new things, didn't I, all that occurred on the 8th of November, 1895?

A. You mean in what case?

Q. In the case of Edward L. Thomas against the Crown
1178 Coal & Tow Company, Bart S. Adams and John T. Taylor?

A. Maybe you did, I don't remember that.

Q. What was there to prevent Mr. Leathe having then the funds in his hands, from coming into the case with a cross-bill and having the entire affairs between Taylor, Adams Thomas and himself determined?

A. That is a question of fact that you will have to get at.

Q. What was there to prevent him from doing that at that time?

A. Well, there might have been a grave question whether it would have been germane to the action which you brought which referred only to the affairs of the Crown Coal Company and not to the affairs of the Crown Coal & Tow Company?

Q. Was there anything to prevent him from filing a cross-bill showing these things were connected?

A. I don't know they were connected.

Q. You were acquainted with all the facts?

A. Yes, sir.

Q. Didn't you file a bill in the United States Court?

A. The resolution stated you know that when these matters were turned over to the Crown Coal & Tow Company that the accounts were completed, and it was not a question of accounting of the Crown Coal Company and yourself Taylor and Adams.

[On the margin:] Nonsense.

Q. Didn't you file a bill of which this is a copy, for an injunction as to the collection of that very judgment because of these matters pending and brought now into the case?

(The paper referred to is here produced.)

A. I did file a bill.

Q. Wasn't that the allegations of the bill and the object of the bill?

A. Well if that is a copy it will state what it is.

Q. I will let you look into it and we will see whether you don't recognize that, and whether that has not been filed in the January term, 1900, of the Circuit Court of St. Clair County, before
1179 Judge Burroughs, don't you remember it?

A. Yes, sir.

Q. Didn't you file one two or three months, four or five or six months in Judge Allen's Court about a similar matter, on the similar matter?

A. Yes, sir.

Q. And you got an injunction on it?

A. Yes, sir.

Q. Now I will read you that; you say in that, you went over all the dealings between the Crown Coal & Tow Company and the different members and the Belleville City Ry. Company and its different

members to all of these transactions about which, all of its affairs, and didn't Mr. Leathe swear in that bill that these things all came under the contract of January 24th?

A. You can see there whether he did or not.

Q. I Want to ask you, I am trying to get you now to state?

A. Now, Mr. Thomas, I would not undertake to repeat that bill.

Q. Didn't you draw up that bill?

A. Yes, sir.

Q. Didn't you set up in this bill all of these statements that were made?

A. I stated in the bill whatever you may find; I won't undertake to say from memory.

Q. I will ask you if your memory is bad?

A. I would not undertake to say on memory of it what is set up in the bill.

Q. This was filed since January 24th, Mr. Koerner?

A. As a matter of course; I have drawn other bills since that time. I never heard of anybody who is supposed to know all the details of a bill filed.

1180 Q. I know all about them, every one of them I filed and by you for that matter. (Reading; "In consideration of the premises, and inasmuch as your orators can have no relief except in a Court of Equity; and inasmuch as without the intervention of a Court of Equity your orator Samuel H. Leathe is liable to suffer unjustly by the multiplicity of suits now pending in these different jurisdiction- as aforesaid neither one of which as shown by the nature and subject matter of this complaint can be settled between all the parties; and inasmuch as your orator Ellen Adams is liable to suffer exceeding wrong by reason of the possible judgments in different Courts relating to the same subject matter to which she is now a party——

A. I guess that part of it was written by Mr. Holmes.

Q. ,— your orators pray that Edward L. Thomas, John T. Taylor, Charles W. Thomas, and Herman Barnickol, Sheriff of St. Clair County, Illinois, be made parties defendant to this bill and the same to answer each and every allegation thereof, but not under oath."

This is an illustration for you: "That an account may be had between the parties to this suit; that your orator Leathe should be subject to account for moneys received by him in this enterprise according to the terms, letter, and spirit of the contract of January 24, 1893. That said Edward L. Thomas may be compelled to account for whatever sums he may have received chargeable to him and for which he is responsible and should account under such contract; and that your Honor may determine the rights and equities of the parties and decree accordingly; that in the meanwhile Edward L. Thomas and John T. Taylor the parties defendant here, and Ellen Adams and Bart S. Adams complainants, may be restrained by preliminary or other injunction of this Court from proceeding further with the collection of any judgment that they may

1181 have, or any of them may have, singly or collectively or any two together against the Crown Coal & Tow Company and the

St. Louis Bellevile & Southern Ry. Company or either of them, and from further prosecuting any suits against said companies or either of them, or said Samuel H. Leath, which may now be pending; and that said Edward L. Thomas be enjoined from further prosecuting the pleas of set-off filed as above mentioned by him in the action of debt pending in the Circuit Court of St. Clair County, Illinois, in the suit of Samuel H. Leathe *vs.* Edward L. Thomas; and that said First National Bank of Belleville, Illinois, be enjoined from collecting said execution issued on the judgment of said Edward L. Thomas *vs.* the Crown Coal & Tow Company, and that all such judgments may be taken into account in making the final account prayed for in this bill."

A. Well, sir, as you read that part Mr. Leathe prayed for, I still say I think it ought to have been granted.

Q. What prevented the Court doing that immediately after November, 1895?

A. *You* Doing what?

Q. The same thing that you do here?

A. A great many other things there had not occurred at that time.

Q. Well, my suit was pending, wasn't it?

A. Yes, sir, your suit was pending.

Q. The one you sought to enjoin the collection of?

A. Yes, sir, it was pending.

Q. The Equity suit in United States was pending?

A. I don't think I could get along any better than I can now.

Q. What prevented you from coming into Court and filing a cross-bill in behalf of Mr. Leathe for this accounting?

A. That occurred to me at one time; it was discussed but I came to the conclusion that inasmuch as this record only related to the old matters of the Crown Coal Company and the rest of those matters mainly to the railroad company, that it would not be a proper
1182 subject matter for a cross-bill.

Q. Don't you claim in this bill they were matters that arose out of the contract of January 24th, 1893?

A. I did so claim, yes, sir.

Q. If they all arose were they not all joined?

A. All those who claimed, that arose out of it, these that were not specially excepted.

[On the margin:] Nonsense.

Q. Wasn't the claim in this bill by Mr. Leathe sworn to that it was not excepted, and you intended to enjoin the collection of the judgment because it had come under that contract?

[On the margin:] Nonsense.

A. That is the receipt of the money, yes, sir, because it came under the $5000 decree. There are a dozen different matters in there.

Q. That is your excuse then, is it?

A. I don't require any excuse, Mr. Thomas.

Q. You don't require any. Well, that is all we want to get at,

is your statement, so that we will understand the situation of that. Did Mr. Leathe swear to these several bills you presented?

A. He swore to those bills that I presented.

Q. Bills for this injunction in the United States Court before Judge Burroughs?

A. I think he did, it will show if he did.

Q. Did you write it?

A. I did to the greatest extent.

Q. Did you write this allegation, Mr. Koerner's bill in the United States Court: "That Edward L. Thomas had brought suit of Rice against the St. Louis, Belleville & Southern Railroad, claiming that he had collected the judgment and appropriated it to his own use?

A. If it was so stated in the bill, I believe I wrote it; I dictated it to the stenographer.

Q. Do you know that was a truthful allegation or an untruthful one?

A. That allegation was given to me by my client.

1183 Q. You knew that litigation?

A. I knew that litigation, yes, sir. I have forgotten that. I want to speak of that Rice case.

Q. You knew that litigation?

A. Yes, sir.

Q. And you put that allegation in you say at the direction of your client?

A. If such allegation is in there.

Q. Yes, sir; you put that allegation in there that there was $400 and some odd dollars collected, $500 and some odd dollars for the Adams and Edward L. Thomas claim?

A. I think that was put in by my associate counsel.

Q. Did your client swear to that too?

A. Well, the bill will show what my client swore to, Mr. Thomas.

Q. I want your recollection of it?

A. That is not important.

Q. It is not?

A. I don't recollect the details of these things.

Q. Now, November 8th, 1895, there were cases after that in the early part or along in February or January to the April term of the St. Clair County Court, commenced by John T. Taylor and Bart S. Adams, and Bart S. Adams individually on a claim that they claimed they had from the old Crown Coal Company; one was the Harmony Mine case; do you remember that?

A. Yes, sir.

Q. One was the case of Bart S. Adams individually?

A. Just when they brought that I don't remember.

Q. Now, do you claim, Mr. Koerner, that Mr. Leathe could not have filed a bill himself upon getting this money to have this affair wound up; you say he could not bring it into my case; could he have filed one himself?

A. Well, I don't know whether he could or not.

Q. You don't know; your were aware, Mr. Koerner, that

1184 there had been a great deal of litigation concerning these claims, were you not?

A. I know the litigation was there.

Q. And prior to the litigation?

A. Mr. Thomas, in filing the bill to settle the account it was your constant claim that the agreement under it of January 24th 1893, had been abrogated.

Q. Did you prevent Mr. Leathe from filing any bill and alleging what he alleged in these bills?

A. I think the question should be determined first before the settlement should be made; that could not be made without deciding that question.

Q. And couldn't you determine that question in that case?

A. There were suits had to be determined.

Q. Hadn't that suit been determined against Edward L. Thomas in the United States Court?

A. Well, that was determined much later than 1895, much later.

Q. But you must remember this is 1896, Mr. Koerner, we are talking about?

A. Well, sir, that case in the United States Circuit Court was not determined until 1897, until the fall or late fall of 1897.

Q. How do you know that, Mr. Koerner?

A. Well, I will tell you what brings it to my recollection is that I wrote the brief in the case while I was in bed, when I was sick in the summer of 1897, in the United States Circuit Court of Appeals.

Q. It had been determined long before by Judge Allen?

A. It was before.

Q. I am asking you if it was determined long before that?

A. No, sir, not long before that, it had not been determined long before that; there was a decree by Judge Allen and you appealed it.

Q. This litigation by Mr. Leathe and Bart S. Adams and
1185 John T. Taylor did you attempt in any way to procure for Mr. Leathe a settlement with those parties.

A. Mr. Leathe was perfectly competent to make a settlement with those parties.

Q. Did you advise settlements?

A. Why, surely.

Q. You did?

A. Whenever there was a reasonable chance to make a settlement, Mr. Leathe didn't require advice.

Q. So that all this litigation that is pending since 1895, you claim is due to the fact that somebody else was claiming what you say was the thing, that I was claiming the stock, a different stock from what somebody else was claiming was the stock?

[On the margin:] Nonsense.

A. Well, I say there was no chance of making any account as long as that main question was not settled.

Q. I am asking you about that, that theory; I am asking you if there was a chance to file a similar bill to the one you filed in the United States Court?

A. Perhaps there was a great many similar to this; the last was not satisfactory.

Q. Why?

A. Why, because they failed to give me the relief I prayed for.

Q. You commenced an injunction against Edward L. Thomas, didn't you for the collection of this judgment?

A. Yes, sir, and didn't get it.

Q. In the United States Court against me?

A. Yes, sir.

Q. And then you came down here and took it over to the State Court?

A. Yes, sir.

Q. You had consented to the reference under our statute in this case before you proceeded then, hadn't you?

A. We had a Referee, had the Referee.

Q. You had consented, I asked you?

A. Well, I think it was a sort of compulsory consent.

1186 Q. Do you; there was not a compulsory consent under our statute, is there now?

A. The fact is this, I had brought all of the parties into it, and that was the only reason in that particular case—I am now speaking of the one which was to enjoin that case; and the reason I brought it was because they would perhaps try the case by jury at law, and it would have been a very difficult and laborious matter to try; that was one of the allegations in the bill while it was being heard or discussed. You said that you didn't care to try it before a jury but you would try it before a Referee. The Court said that would meet the difficulty and so it went to a reference.

Q. And so you consented to a Referee? Was there anything at that time to prevent you from filing a bill before Judge Burroughs asking for an accounting between all the parties?

A. I think I filed that pretty soon thereafter in the United States Court.

Q. Was there anything to prevent you from doing it at that time before going to a Referee?

A. I don't know as there was anything to prevent my doing that at that time, either at that time or some other time.

Q. I will ask you this question, Mr. Koerner; wasn't it pleasant to you that the litigation took place as it did?

A. By no means?

Q. By no means?

A. I never want my clients to litigate if I can help it.

Q. Mr. Koerner, you have been a practitioner for a good many years in St. Clair County?

A. Yes, sir.

Q. You have had corporations, been the attorney of corporations?

A. Yes, sir.

Q. You were employed by the Bridge Terminal Associa-

1187 tion people during the time of this litigation, partly by it?

A. Yes, sir.

Q. By a yearly salary?

A. Yes, sir.

Q. You had all their business in Illinois?

A. I simply tried such law cases as they referred to me in Illinois, yes, sir.

Q. Damage cases?
A. Damage cases.
Q. And condemnation cases when it was necessary for them to get land and all that kind of thing?
A. I tried condemnation cases.
Q. You were attorney for the Louisville Evansville & Consolidated Railroad for a great many years?
A. Yes, sir.
Q. What yearly salary did you get from the Bridge Company?
A. The Bridge Company; well, I don't know it is necessary to state that amount, if your Honor please. We are not trying the reasonableness of the charges as determined by the board of arbitration, because that has been determined.

Mr. SMITH:

Q. That simply has been determined as between you and Mr. Leathe?
A. And these companies.

Mr. THOMAS:

Q. Wouldn't that materially cut down any of these beneficiaries' funds?
A. I don't know what a trustee can do except to defend to the best of his ability.

The REFEREE: He has not already in his direct examination undertaken to testify as an expert as to the reasonableness of these charges, has he?
A. No, sir.
1188 Mr. THOMAS: I think he has as an expert.
Mr. SMITH: I understood him to say that to his knowledge those charges were reasonable and propely chargeable against this fund?
A. As to the reasonableness I was not interrogated; I didn't say hadn't anything to say, because I have said they were determined by the proper Court.

Mr. THOMAS:

Q. I will ask you then this question; do you say that these two companies, for advice to the companies, drawing these resolutions that you spoke of during the 2½ years, that your charge in your arbitration $5000, and a charge of Mr. Holmes of $6000, are reasonable and proper charges irrespective now of the litigation that was spoken of here?
A. I will tell you Mr. Thomas, when a man is compelled to resort to law, as a matter of course he may make his bill as high as he thinks it justifiable under the circumstances.
Q. So you were compelled then to resort to law?
A. I was compelled to resort to law, yes, sir.
Q. Now, don't you know then, Mr. Koerner, at that time that Mr. Leathe would not pay you, that he would not pay any of the claims arising out of this thing?

A. No, sir, up to what time?
Q. Meeting these little odd matters, not even his lawyers' fees?
A. I found out he would not pay my fees.
Q. You know he would not pay any others?
A. No, I know he paid a great many, Mr. Thomas.
Q. After a law suit?
A. No, no.
Q. What did he pay?
A. A great many of his obligations that he had incurred.
Q. Among the parties, among these parties now, the beneficiaries?
1189 A. You mean yourself, Taylor and Adams?
Q. Yes, or yourself or anybody else?
A. He paid Taylor and Adams something on account, both of them.
Q. When?
A. When, let me see,——
Q. Didn't he pay Adams $10000 in order to get hold of the bonds?
A. I wasn't present and knew nothing of that case except after that time I saw the contract which was drawn up, and that contract did not so state that he had paid it in regard to the bonds.
Q. To get hold of the bonds I said?
A. He did get the bonds at that time on his demand heretofore when he paid $1200, which was shortly afterwards.

[On the margin:] Nonsense.

Q. What claim is there, Mr. Koerner, at any time that he paid?
A. Why, the bills against the railroad company and against the coal company.
Q. That was contracted?
A. Coal lands and all that sort of thing.
Q. That was current claims and expenses; I am not talking about that; I mean since he got this money what other claim has he paid now to anybody that was entitled to it any of the beneficiaries, or his lawyer?
A. His account shows what he paid, Mr. Thomas.
Q. Do you know of any; that is what I am trying to get at; do you know?
A. You mean the Adams, Thomas and Taylor; that is what you mean.
Q. Yes.
A. I believe as far as my information goes he paid Adams at one time $10000 on account and another time he paid almost $10000, and he paid Taylor $1200; that is as far as I know of any payment he paid to these parties.
1190 Q. The balance of this nearly $10000 was paid in March, wasn't it?
A. Yes, sir, I presume about that time.
Q. Wasn't that after Mr. Holmes had brought in these suits

against him, two suits that had been pending for several years and now pending here?

A. Yes, sir.

Q. And for which Mr. Leathe charges in these accounts; is that right?

A. I don't know what charges he makes.

Q. For lawyers' fees, legal charges, costs and everything else?

A. Well, some of these suits, yes, sir, that were defended some for reasons I have stated particularly.

Q. And then you say that after he was preserving the fund ever since March, 1893, he goes to work and pays these parties what they claimed, didn't he, in order to settle with them, didn't he?

A. I think he paid them before that time.

Q. I was speaking of the Adams here?

A. He didn't make a settlement with them; he paid them something on account.

Q. Didn't he swear he did and settle the account?

A. That time?

Q. Had an arrangement with him in March?

A. As to the $11000 and interest.

Q. And it is a settlement unless there is a surplus after the payment of claims that are to be determined here?

A. Yes, sir, in regard to that $11000.

Q. Mr. Koerner, how can it be that you are claiming that these are proper charges when Mr. Leathe has after three or four years of litigation, three years and six months of litigation entered into an agreement concerning this thing?

A. Now, let me tell you this, that particular claim of $11000 was prosecuted by Adams of Mrs Adams on the similar theory
1191 to yours; that is to say that Mr. Leathe had personally purchased these tugs or rather the interest in property of the Western Coal & Tow Company from Adams and had agreed to pay him $11000 in bonds; therefore it was a personal obligation. That was the suit Mr. Leathe resisted; he did not deny that he had made that contract with them but he said that it was a contract made subject to the contract of January 24th, 1893, to share the fortunes of another undertaking.

Q. Or to have paid off that amount under the contract that Mr. Leathe had:

[On the margin:] Nonsense.

A. I don't know finally whether Mr. Leathe in his settlement with them took that view or the other view, that they were reasonable or best.

Q. How does it come, Mr. Koerner, a few moments ago you said that no settlement of these affairs could be made on account of the litigation conducted by Edward L. Thomas, and you never made that settlement with parties owing to some claim that is pending now?

A. Partial settlements were made.

Q. Partial; how did you state that nothing could be settled a little while ago because the claim of Edward L. Thomas here?

A. I meant to say the matters claimed in the final accounting to be had, that nothing further could be paid on them. Of course Mr. Taylor wanted some money of Mr. Leathe; and Mr. Leathe paid him that $1200 on the theory that so much was coming to him and more possibly.

Q. This amount was $9900 and some odd dollars on a claim of $11000 straight.

—. The claim had grown much beyond that though on the interest.

Q. It was $11000 principal?

A. Principal, yes, sir.

1192 Q. Now, then, you paid on a claim of $11000 almost $10000 including interest, about 2/3's of it?

A. I think Mr. Leathe paid 2/3's of the claim.

Q. Amounting with interest to $9900 and some odd dollars?

A. That is my remembrance.

Q. How does it come that you could make so near a full settlement of that claim with all of this litigation pending, and can make no settlement with Mr. Taylor on another claim?

A. Mr. Leathe is of the opinion that following his agreement he has paid as much or more than has been or can be claimed.

Q. So that when a man has possession,—when he has $4000 of those bonds for which to get possession of Mr. Leathe paid him $10000 on account or $10000, and has a claim of $1500 otherwise, amounting to $5500 without interest, and can pay one claim of $10000. in full or pay $9900. on the other claim of $11000, and yet claim that you cannot pay to Taylor in the case of $1200 because of litigation of Edward L. Thomas; is that right?

A. I suppose that is a speech and not a question; is that right?

Q. It is a question; is that right?

A. I didn't listen to it as a question.

Q. Is that your position or isn't that it?

A. The terms of this settlement or question there was incorrect so that I cannot give an answer to the question here. I can state however and I repeat that it was impossible as long as your suit was undetermined to make complete accounting in this case, for anything like a correct accounting on this case.

Q. Was there anything in the way, Mr. Koerner of making a tender to Taylor and Adams reserving out of the fund all that Edward L. Thomas claimed?

A. Well, as I understood it, Mr. Thomas, that if Edward L. Thomas claim was paid and the other contingent claims paid there would be nothing to pay them possibly; then there was no

1193 tender to be made, and if payment was made to them likely it would have been more than they would be entitled to.

Q. Then you paid these two claims of the Adams estate, then in that case the amount of money that you paid Bart S. Adams for the Adams' estate would be in excess of what you would have to pay?

A. Very likely.

Q. How does it come that you did that; how does it come that you advised that to be done?

A. Well, this claim of Adams might possibly under the evidence which was taken there have been a charge to Mr. Leathe personally irrespective of the claims, that was the claim you understand Adams claimed that he had, that Mr. Leathe had purchased this property and was to pay him for it $11000. Now, if that were established he would have to pay that whether there was anything left out of this fund or not.

Q. Well?

A. And it was thoughf best to compromise it.

Q. Then Mr. Leathe claims that it was not due from him personally?

A. That was his claim, yes, sir.

Q. Now, you would not pay Mr. Taylor out of this fund the amount that you owed him, these two amounts amounting in round figures to $20000, claiming that you could not pay the same portion to Mr. Taylor?

[On the margin:] Nonsense.

A. Well, because the chances were that Mr. Leathe might have been held to pay this personally anyhow, and he thought it best to compromise it on the payment of 2/3's.

Q. Now, then, Mr. Koerner, going back to your own statement again for the purpose of directing your attention, all of this litigation then was to preserve the fund for the beneficiaries and necessarily arose in order to do that?

A. You must remember that Mr. Leathe himself was the
1194 largest beneficiary and most interested in this case.

Q. Mr. Koerner, don't you say that he had the money in his possession, that he had this money?

A. Yes, sir, he had the money.

Q. So that it was not necessary for any litigation in regard to what he had in his pocket, to preserve that?

A. Why, surely.

Q. Was it; so that he had to defend against the claims of Bart S. Adams?

A. Anything that he had paid the largest part of it came out of him.

Q. Notwithstanding his having the $500000?

A. Inasmuch as he was the largest interested in the surplus.

Q. And now according to the statement there is $14000 of surplus now on hand?

—. He had the largest interest in the surplus.

Q. But notwithstanding and after all of these claims now had been adjusted, you must remember his account shows so he claims about $14000 on hand, doesn't it?

A. Well, not if you count in the contingencies.

Q. What I am getting at is what he has paid, the amount he has paid out of it?

A. I believe there is a surplus, yes sir, of something like that. There is $50000 or $100000 of claims likely yet.

Q. What is left besides my claim and the claim of John T. Taylor and the Adams' estate?

A. It appears there on the paper what it is.

Q. There is about $5000 isn't there in the shape of new claims?

A. Whatever it is, yes, sir.

Q. He has outside of the new claims $14000 on hand?

A. Not if he had to pay $50000 out of it.

Q. We are not talking about my claim now; we are talking
1195 about your claim.

A. About my claim?

Q. You say that he litigated with you to protect this fund?

A. Of course, the fund; if he had not paid me anything the fund would be that much larger, wouldn't it?

Q. Was he protecting the fund when litigating with you?

A. Surely, if he had succeeded.

Q. Was that in good faith?

A. He did not succeed.

Q. Was that in good faith; you know that litigation; was that in good faith or was it not, against you and Mr. Holmes?

A. It was good faith on my part.

Q. Was it on Mr. Leathe's part; I want a categorical answer?

A. I have studied Mr. Leathe's character somewhat; I thought he thought it his duty to defend. When a man does what he thinks is his duty I know he acts in good faith.

Q. Was it his duty to employ a detective to watch you and Mr. Holmes who had been in his counsel for 2½ years to discover whether you did not feloniously collude with one of the arbitrators?

A. I don't know why he did that.

Q. Don't you know that he testified here; didn't you hear his testimony?

A. Yes, sir.

Q. Didn't you go to Mr. Holmes; didn't he make the motion in that case first to set aside the award on that ground?

A. He made a motion to set aside the award upon several grounds.

Q. Wasn't that one of them?

A. One of them was that the relations between Mr. Holmes and Mr. O'Brien were of such a character as not to have made Mr. O'Brien a proper arbitrator.

Q. Didn't he produce evidence, evidence of this very de-
1196 tective and of John T. Taylor and of himself in Court on a motion to set aside the award?

A. I don't think that he had the detective there.

Q. Didn't he have evidence?

A. Not the detective, I don't think.

Q. Well, himself?

A. There was no evidence of that character; there was a hearing in open Court.

Q. Well now what did he have?

A. He had there a witness from a restaurant, a waiter and the pro-

prietor and the bar-keeper of the Budweiser saloon and Restaurant to testify as to whether Mr. O'Brien had ever lunched with us.

Q. Now then he took that case upon that motion to the Supreme Court?

A. I think it was taken up; I don't remember what the charges were.

Q. He took that case upon that motion to the Supreme Court?

A. Yes, sir.

Q. And paid Mr. Nichols for defending it?

A. Yes, sir.

Q. Do you think that is a proper charge against this fund?

A. If it was in defense of the fund, yes, sir.

Q. So then you were attempting, you and Holmes to rob this fund, were you?

A. No, sir.

Q. You were not?

A. No, sir.

Q. Your claim was in good faith, wasn't it?

A. Yes, sir.

Q. For services actually rendered?

A. Yes, sir.

Q. And yet you claim that Mr. Leathe acted in good faith in having those suits to defend against?

1197 A. I have given my answer to it.

Q. You decline to answer that, do you?

A. I have answered it.

Q. I want you to answer it again?

A. I said that in my study of Mr. Leathe's character I have come to the conclusion that he thought it was his duty to defend this case.

Q. Have you studied his character carefully, Mr. Koerner, for the last 3 or 4 years?

A. No, I have not, but that is in the record of course; it is embarrassing to me; that is my idea about Mr. Leathe.

Q. You had performed services, hadn't you up; to that time?

A. Professional services?

Q. Yes, sir?

A. Yes, sir.

Q. And Mr. Leathe knew it?

A. Yes, sir.

Q. Did he make any offer to you as to what he ought to pay you?

A. He had paid me something; and as we were to run,——

Q. How much?

A. I don't know.

Q. Did he claim it was all you were entitled to?

A. I think he gave me, I think he wanted to pay me some more.

Q. How much more?

A. Well, I didn't think it was worth considering, less than $1000.

Q. Less than $1000; and you and Holmes recovered how much?

A. I recovered $10080, and Mr. Holmes recovered $5400 I believe; I can't swear positively.

XX. Now, something has been said about this case of Edward C. Rice. Mr. Leathe claimed that many years before Mr. Rice was barred by the statute of limitations. He had procured some right of way for this company which was never utilized for the
1198 Belleville City Ry. Company while it was controlled by Charles W. Thomas. Then he brought suit against the railway company after Mr. Leathe had gone into it, and of course could only recover on the theory that there had been subsequent promises to pay it. Mr. Leathe always told me and testified and said to everybody that asked him that I ever heard that he had made no such promise, that it was not a just claim, that it was a debt, nobody else's debt but Charles W. Thomas, and the company had no benefit from it. He fought that case to the utmost, and I don't see how he could have done otherwise and have done his duty to his company or to himself or to his associates.

Q. Not even, Mr. Koerner, after every associate put upon the stand in cross examination swore it was a proper claim?

A. I took the statement of my client.

Q. And you heard the evidence?

A. I heard the evidence in the case, yes, sir.

Q. Every associate, I say, excepting Mr. Leathe testified that it was a proper claim and he had agreed to pay it?

A. I don't think Mr. Adams testified to that, did he?

Q. Yes, sir, Mr. Adams and all?

A. Well, possibly he did; at all events it didn't look like it was a good claim; it didn't have the earmarks of a good claim.

Q. You don't know; you know Mr. Rice for a good many years?

A. I know him, yes, sir.

Q. He was a respectable, upright gentleman, wasn't he?

A. I always considered him so.

Q. He was making this claim, wasn't he?

A. Yes, sir.

Q. And got the benefit of it to, didn't he?

A. I presume so.

1199 Q. And with all of that evidence now before you, Charles W. Thomas who had nothing to do with this fund, Mr. Chipley who had nothing to do with the fund, Taylor, Adams and Thomas, who were the only ones that claimed anything to do with the fund, and all the parties that then claimed to have had, all of them united in that claim; is that right?

A. Now, I don't know that your premises are correct at all; but I do know that I did think it was a proper claim to fight.

Q. Well, if my premises are correct would it have been?

A. If your premises are correct it might still have been a proper claim to fight. I said somewhere during my evidence that the balance due me according to Mr. Leathe's account on October 18, 1898, of $2245 was justly due as balance for professional services up to that time, that the charges were reasonable.

SAMUEL H. LEATHE, recalled for the defendant, testified.

Direct examination.

By Mr. KOERNER:

Q. What passed between you and Mr. Rice in regard to that case?

A. Prior to the sale of this road at the time referred to in the record with regard to the negotiation with Charles W. Thomas as stated about the Rice claim, Mr. Rice came to me,—I had some acquaintance with Mr. Rice before this, before we went into this arrangement,—he stated to me that Mr. Charles W. Thomas was owing him considerable money, some $1500 and Mr. Thomas had promised to pay him when he got some money he said was coming from me, and that when he got that money he would pay him. So he came to me to inquire what the prospects were, and he needed the money. I said there was no money coming from me to Mr. Thomas and I had not known of it. Then several times after that he called on me; and then after the sale was made he called; he heard of the
1200 sale of the properties, and I told him that now I thought would be a very good time for him to collect his claim from Charles W. Thomas as I understood he had not disposed of his stock or whatever interest or whatever he had in these properties; that the Sheriff had got quite a large amount of money, as I understood that it would be a good time for him to collect his debt.

Q. From Mr. Thomas?

A. From Mr. Thomas. I never heard anything more from Mr. Rice until the suit was brought by Charles W. Thomas and from Mr. Rice in connection with this suit. Then they went into the case on a different theory. But Mr. Rice had never up to that time claimed anything from me, or never had made a demand on me and never did make a demand on me that I was to pay that money or that I was owing Mr. Charles W. Thomas, or anything of the kind. Then I told him that the money had been paid by the Illinois Central Railroad Company or by Mr. Gary, Judge Gary, to Charles W. Thomas, so I understood, and I thought that was a very good time for him to get his money and he went off at that time to collect it. But then they fixed up this thing to bring it against me; that right of way had no connection with this road and as I remember that in connection with the charter which Mr. Charles W. Thomas possessed. Prior to this transfer to us I never assumed to pay that or anything of the kind. I never told Charles W. Thomas or Edward C. Rice that I would pay that, never assumed to pay that or promised to pay it or anything of the kind, and everything that was testified to contrary to that was false.

Cross-examination.

By Mr. THOMAS:

Q. Is that all your statement, Mr. Leathe?

A. I think that is all I have to say.

Q. Yes; you testified to that in the case of Rice against the railway company, didn't you, about the same you have here testified?

1201 A. That is about the same.

Q. You heard Mr. Rice testify to the contrary?

A. No, I didn't hear him testify to the contrary; I wasn't present.

Q. You didn't go over there to the trial?

A. I was not present, no, sir.

Q. You refused to appear in the trial?

A. I met Mr. Rice subsequently on the street and he invited me down to the trial.

Q. You refused to appear at the trial of the case, didn't you?

A. I say I was not over there.

Q. You declined to appear over there.

A. I did not go.

Q. But you testified to that in that case, your evidence being taken over here by deposition?

A. Yes, sir.

Q. You could testify and decline to testify as to whether you had sold the property upon conferring with your lawyer, didn't you?

A. No, sir.

Q. You didn't; you also refused upon advice of your counsel, Mr. G. A. Koerner to answer the question as to whether you had not sold the assets of the company?

A. I have no recollection of anything of that kind.

Q. Well, will you say you did not?

A. I say I decline to.

Q. Did you decline to answer?

A. I don't see why I should have declined.

Mr. KOERNER: Perhaps it was irrelevant?

A. It might have been an error to ask that question, or something of that kind.

Mr. THOMAS:

Q. Now, then, to go further; you don't know anything then about the opinion of the Appellate Court about that, do you?

1202 A. Well, I know the decisions of the Court in that.

Q. Didn't they decide that you had promised to pay Mr. Rice?

A. They decided on these false statements I understood.

Q. On false statements, these statements of all of these witnesses excepting yourself?

A. There were false statements made there; I say it; I say there were false statements and that they decided on those statements.

Q. Those false statements were not made by you then?

A. They were not, no sir.

Complainant's Rebuttal.

Mr. SMITH: I want to make several sets of offers, Mr. Koerner, we want to offer in the arbitration cases of Messrs. Koerner and Holmes part of the pleadings and records copies of which, before presenting to the Master we will hand to Mr. Koerner, and with leave on his part to add anything thereto that he may wish.

We want to offer the opinion, referring to our mentioning the other day of our intention to offer the opinions or one opinion of the Appellate Court and Supreme Court of Illinois, we now offer the opinion of the Appellate Court in the case of Edward C. Rice against the St. Louis, & Southern Belleville Ry. Company in the 68th or 69th Illinois, Appellate Court Reports.

Objected to the opinion because the opinion is not evidence; It is authority but no evidence.

And in connection with that we desire to offer the mandate of that Court to the lower Court; and it is admitted that the mandate or decision to the lower Court in accordance with the recital of opinion——

1203 Mr. KOERNER: In which the judgment was affirmed and that it was paid by Mr. Leathe.

Mr. SMITH: And that a mandate was sent to the lower Court in accordance with the affirmance.

Mr. KOERNER: Of course the mandate was sent; I don't dispute that fact the mandate was ever sent.

The REFEREE: Has the judgment of the lower Court been put in evidence?

Mr. KOERNER: Yes, sir, it appears it had been.

Mr. SMITH: A mere affirmance of the judgment will not amount to anything, but there will be recitals in the finding of the upper Court, findings of fact under the Illinois practise.

Objected to as evidence.

The REFEREE: Is that the opinion in the Appellate Court?

Mr. THOMAS: No, the opinion of the Supreme Court.

Mr. SMITH: The one we have been talking about is the Appellate Court.

Mr. THOMAS: It went to the Supreme Court.

The REFEREE: What you offered here was the opinion of the Appellate Court.

Mr. SMITH: That is right in the 68th or 69th.

Mr. THOMAS: It went to the next court and the Supreme Court adopted the opinion of the Appellate Court and decided the Appellate Court had determined the facts.

The REFEREE: I didn't suppose under your practise over there the Appellate Court can determine facts. I thought the trial Court determines those.

Mr. SMITH: They have a right to review it in law and equity cases; it is a peculiar practise.

The REFEREE: I will let it go in then.

Mr. SMITH: We offer at the same time the opinion of the Supreme Court in the same case found in the 171 Illinois or 170, in the Rice case.

1204 Objected to as a matter of evidence.

The REFEREE: I don't care for the opinion in that case; all you are entitled to in the Supreme Court is the judgment.

Mr. THOMAS: That is right.

Admission.—It is admitted that the judgment of the Supreme

Court was one of affirmance and may be considered as an offer of evidence without a copy thereof being produced.

Mr. SMITH: Now, we will offer the opinion of the Supreme Court of the State of Illinois in the case of the Crown Coal & Tow Company *vs.* Edward L. Thomas on page 534 *et seq.* of volume 177 of the Illinois Reports.

Admission.—It is admitted that the judgment was affirmed without a production of the mandate or a copy of the same, and that a petition for re-hearing was filed and denied.

Same objection as to the former offer.

The REFEREE: I will make the same ruling; you offer the opinion of the Court of Appeals in that case and I will allow it to go in the same way as in the other case.

Mr. SMITH: We will then offer the opinion of the Court of Appeals as recited in the opinion of the Supreme Court last offered.

The REFEREE: If you will offer the opinion of the Court of Appeals in that case I will be disposed to allow it to go in the same way I allowed it to go in in the Rice case, because it may have some bearing as a matter of opinion of the Court of Appeals and of the Supreme Court, the decision including the opinion expressed by the Court of Appeals.

Mr. SMITH: We will put in the opinion in this case in the Court of Appeals.

1205 Admission.—It is agreed that in the case of the loss of any Court paper in this case the files may be referred to which have been mentioned in lieu of the notes being set forth in the record.

Defendant's Rebuttal.

Mr. KOERNER: I have an abstract which purports to be the mandamus case referred to in Mr. Thomas' affidavits which was a suit of mandamus by Edward L. Thomas filed in the Circuit Court of St. Clair County in which he alleges that he is a director of the Crown Coal & Tow Company and asks a writ of mandamus against that company with this prayer by writ of mandamus asking the Crown Coal & Tow Company forthwith to close and to keep its principal office or place of business with correct books of account, and that the books and records be open to this petitioner to read and consider them at all reasonable times.

Now the books of the Company except the books of its commercial transactions were kept in St. Clair County, but its business of selling coal was carried on in the City of St. Louis; that those books were in the city of St. Louis and Mr. Thomas instituted mandamus to compel the company to keep those books in Belleville.

Mr. SMITH: We have no objection to that.

Mr. KOERNER: Mr. Thomas and I were not in accord as to what this case was about; I hadn't sufficient evidence; that is what it was about; I wish to state that it was as I stated a writ of mandamus to compel the company to keep its books and all of its books in St. Clair County where it had its main place of business according to the charter.

The REFEREE: It is a mandamus by him you say, a mandamus to deliver some stock.

Mr. KOERNER: Mr. Thomas said it was a suit to deliver stock; he is mistaken about that.

Mr. THOMAS: I said a mandamus suit to deliver stock; it might have been one for the books; that was my recollection that
1206 was one to deliver the stock.

Mr. KOERNER: There wasn't that I could find; I don't remember any and I don't think that there was any.

Admission.—It is agreed that the plaintiff if it exists may secure the copy of a petition for mandamus brought by Mr. Thomas to compel the issuance of stock to him, and after showing the same to counsel for the defendant present the same to the Master; and it may be considered in evidence on behalf of the plaintiff.

The REFEREE: And if any such paper is presented then it may be further referred to with the testimony of Mr. Koerner which is given now as to the purpose of that suit and that may be considered as correct.

Mr. SMITH: Yes, sir.

Mr. KOERNER: There may have been another one.

Mr. SMITH: We simply say here there was also an additional one.

The REFEREE: Then if you don't present it, what Mr. Koerner has said may be accepted as a true statement as to the purposes of that suit.

This was all the evidence on either side and the case was thereupon submitted to the Referee.

1207 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1899.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

The evidence of Edward L. Thomas, defendant, taken in rebuttal in the above cause, before L. D. Turner, referee, at the office of the said referee, in the city of Belleville, county of St. Clair, and State of Illinois, on Thursday, the 9th day of February, 1899.

There were present Mr. G. A. Koerner, representing the plaintiff, and Edward L. Thomas, the defendant, appearing in his own behalf.

1208 Mr. EDWARD L. THOMAS, the defendant, sworn in his own behalf testified as follows:

I heard Mr. Leathe's testimony in this case. In answer to the question "Was there anything said to you by Edward L. Thomas about signing it," (referring to the contract in force January 24th, 1893) and Mr. Leathe answered "Mr. Edward L. Thomas, at a meet-

ing, either March 25th, or a subsequent one, I would not state now without refreshing my memory from documents whether it was that meeting of the 25th. or a subsequent one, my memory is it was a subsequent meeting, made the remark that he did not know that Mr. Leathe had signed the contract then—it must have been a subsequent meeting, I think it was—and I made answer to it. He didn't ask me the question but he made such a speech that he did not know whether Mr. Leathe had signed the contract and I said, "Haven't I been acting under it? Ain't I working under that agreement?" And nothing was said in reply.

This reply is untrue. There never was any subsequent meeting of the Board in which I took any part, in which there were any frien-ly relations existing between Mr. Leathe and myself. We had no meeting until the 11th. of August, at which Mr. Leathe was present. I then resigned as director on account of the action he took at that meeting.

At no time did he tell me that he was acting under the agreement of January 24th., 1893, although I asked him to execute it a number of times.

After the January 24th. contract between us, Mr. Leathe testified that he did not sue me on the note and that one of the judgments he sues on in this case was not recovered on the note given by Henry T. Kent of the Belleville & St. Louis Railway Company. This
1209 is a record of the judgment on that note and is one of the judgments in this suit. (producing paper.) That note is dated February 1st., 1893, given by the Belleville & St. Louis Railway Company to myself, and signed by myself as manager of Railways, and assigned by me to Henry T. Kent, for five hundred dollars.

There was a payment of two hundred and fifty dollars made on that note by Mr. Leathe, for some purpose of his own, and in his testimony he had sued for that before a Justice of the Peace to get that note. He had paid that and he said I beat him, but he recovered a judgment against me in the Circuit Court and I made no defence and he has sued me on that judgment here.

I will introduce those two judgments.

The judgments are as follows, to-wit:

1210 STATE OF MISSOURI, *City of St. Louis, ss:*

In the Circuit Court in and for Said City, April Term, 1894.

SAMUEL H. LEATHE, Plaintiff,
vs.
EDWARD L. THOMAS, Defendant.

Plaintiff for his several causes of action against defendant states:

First. That heretofore at the City of St. Louis, Missouri on February 1st., 1893, the Belleville & St. Louis Railway Company made its certain promissory note which is herewith filed and marked Exhibit A. by which note said Company promised to pay to the

order of defendant ninety days after date for value received five hundred dollars with interest after maturity at eight per cent. per annum; that thereafter the defendant negotiated and endorsed said note for value and the same at its maturity was held by the Union Trust Company who caused demand for payment thereof to be duly made of the maker but payment was refused whereupon said note was duly protested for non-payment of all which and that he was looked to for the payment of said note, defendant was given due and sufficient notice; that after the maturity of said note, to-wit:
1211 on November 27th, 1893, there was paid thereon two hundred and fifty nine ($259.) dollars; that plaintiff is now the holder of said note and that the balance of principal and interest and damages for the protest thereof remain unpaid. Plaintiff prays judgment against the defendant for said balance of principal and interest and the damages for said protest and costs.

Second. That by his certain other promissory note also herewith filed but marked Exhibit B. defendant at St. Louis, Missouri on March 6th, 1893, promised to pay plaintiff for value received on demand one thousand and fifty dollars with interest from date at six per centum per annum; that no part of said note has been paid and therefore plaintiff now sues and prays judgment against defendant for the amount thereof and interest and costs.

Third. That defendant at said City of St. Louis on April 25th., 1893, made and delivered to plaintiff another promissory note also herewith filed but marked Exhibit C, by which note defendant promised to pay plaintiff for value received five hundred dollars on demand with interest from date at six per cent. per annum; that no part of said note has been paid, wherefore plaintiff now sues and prays judgment against defendant for the amount thereof and interest and costs.

Fourth. That defendant on May 29th., 1893, by his certain other promissory note herewith also filed and marked Exhibit D dated St. Louis May 29" 1893 promised on demand to pay plaintiff one hundred dollars for value received with interest from date at six per cent. per annum; that no part of said note has been paid, therefore plaintiff now sues and prays judgment against defendant for the amount thereof and interest and costs.

By LUBKE & MUENCH,
Pl'ff's Att'ys.

1212 STATE OF MISSOURI, *City of St. Louis, ss:*

George W. Lubke, Attorney and agent of plaintiff being first duly sworn on oath states that the plaintiff has a just demand against defendant and that the amount which affiant believes the plaintiff ought to recover after allowing all just credits and set-offs is two thousand and seventy dollars and ninety-one cents ($2070.91) and that affiant has good reason to believe and does believe that defendant is not a resident of the State of Missouri.

GEO. W. LUBKE.

Subscribed and sworn to before me this 10th day of March, 1894.

PHILLIP H. ZEPP,
Clerk Circuit Court.

$500. ST. LOUIS, Mo., *Febr'y 1st.*, 1893.

Ninety days after date we promise to pay to the order of Ed. L. Thomas, Five Hundred Dollars, for value received, negotiable and payable at the office of the State Bank of St. Louis, with interest after maturity at the rate of eight per cent. per annum.

THE BELLEVILLE AND ST. LOUIS
RAILWAY COMPANY,
By EDWARD L. THOMAS,
Gen'l Manager.

Exhibit A.

[Written across the face.]

Due.
Protested for nonpayment at the City of St. Louis Mo. this 5th day of May 1893.

PAYTON S. CARR,
Notary Public.

1213 (Endorsed.)

E. L. Thomas.
Received this 27th day of November 1893 on the within note from S. H. Leathe, two hundred and fifty ($250.) dollars paid by him on account of order from E. L. Thomas to Thomas A. Stoddart of Nov. 17th., 1893 for delivery of stock, Henry T. Kent.
May 5th., '93.
Refused payment. No instruction to pay.
P. T. C.

$1050. ST. LOUIS, *March* 6, 1893.

On demand after date I promise to pay to the order of S. H. Leathe, one thousand and fifty dollars, for value received, with interest from date at the rate of six per cent. per annum.

EDWARD L. THOMAS.

Exhibit B.

ST. LOUIS, *April* 25, 1893.

On demand after date I promise to pay Sam'l H. Leathe or his order Five Hundred Dollars for value received with interest at six per cent. per annum, until paid.

EDWARD L. THOMAS.

Exhibit C.

1214 ST. LOUIS, *May* 29, 1893.

On demand after date I promise to pay Sam'l H. Leathe, or his order one hundred dollars for value received, with interest from date at the rate of six per cent. per annum until paid.

EDWARD L. THOMAS.

Exhibit D.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, do hereby certify that the above and foregoing is a true and complete copy of the petition and affidavit, and exhibits "A," "B," "C," and "D," filed in my office on the 10th day of March, 1894, in the cause wherein Samuel H. Leathe, is the plaintiff and Edward L. Thomas, is the defendant, the same being numbered 96033 of the causes of said Court, as fully and truly as the same remain on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of St. Louis, this 27th day of December, A. D. 1898.

[SEAL. THOS. B. RODGERS, *Clerk.*

10c. Internal Revenue Stamp.

1215 STATE OF MISSOURI, *City of St. Louis, ss:*

Be it reme-bered, that heretofore, towit: on the tenth day of March A. D. 1894, there was filed in the office of the Clerk of the Circuit Court, City of St. Louis, within and for the City and State aforesaid, (the said Court being a Court of record, having a clerk and seal) a petition in cause No. 96033.-A. of said Court wherein Samuel H. Leathe, is plaintiff, and Edward L. Thomas is defendant.

The said petition and affidavit thereto, are respectively, in the words and figures following, towit:

STATE OF MISSOURI, *City of St. Louis, ss:*

1216 In the Circuit Court in and for said City, April Term, 1894.

SAMUEL H. LEATHE, Plaintiff,
vs.
EDWARD L. THOMAS, Defendant.

Plaintiff for his several causes of action against defendants. states—

First. That heretofore at the City of St. Louis, Missouri, on February 1st, 1893, the Belleville & St. Louis Railway Company made its certain promissory note which is herewith filed and marked Exhibit A. by which note said Company promised to pay to the order of defendant, ninety days after date for value received five

hundred dollars with interest after maturity at eight per cent. per annum; that thereafter the defendant negotiated and endorsed said note for value and the same at its maturity was held by the Union Trust Company who caused demand of payment thereof to be duly made of the maker but payment was refused, whereupon said note was duly protested for non-payment, of all which and that he was looked to for the payment of said note, defendants was given due and sufficient notice; that after the maturity of said note, to-wit: on November 27th., 1893, there was paid thereon two hundred and fifty-nine ($259) dollars: that plaintiff is now the holder of said note and that the balance of principal and interest and damages for the protest thereof remains unpaid. Plaintiff prays judgment against the defendant for said balance of principal and interest and the damages for said protest and costs.

Second. That by his certain other promissory note also herewith filed but marked Exhibit B. defendant at St. Louis Missouri, on March 6th, 1893, promised to pay plaintiff for value re-
1217 ceived on demand, one thousand and fifty dollars, with interest from date at six per cent. per annum; that no part of said note has been paid and therefore plaintiff now sues and prays judgment against defendant for the amount and interest and costs.

Third. That defendant at said City of St. Louis, on April 25th, 1893, made and delivered to plaintiff another promissory note also herewith filed but marked exhibit C., by which note defendant promised to pay plaintiff for value received five hundred dollars on demand, with interest from date at six per centum per annum, that no part of said note has been paid, wherefore plaintiff now sues and prays judgment against defendant for the amount thereof and interest and costs.

Fourth. That defendant on May 29th, 1893, by his certain other promissory note herewith also filed and marked exhibit "D," dated St. Louis May 29th, 1893, promised on demand, to pay plaintiff one hundred dollars for value received, with interest from date at six per centum per annum: that no part of said note has been paid, therefore plaintiff now sues and prays judgment against defendant for the amount thereof and interest and costs.

By LUBKE & MUENCH,
Pl'ff's Att'ys.

STATE OF MISSOURI, *City of St. Louis, ss:*

George W. Lubke, attorney and agent of plaintiff, being first duly sworn, on oath states—that the plaintiff has a just demand against defendant and that the amount which the affiant believes the plaintiff ought to recover after allowing all just credits and set-offs,
1218 is two thousand and seventy dollars and ninety one cents ($2070.91) and that affiant has good reason to believe and does believe, that defendant is not a resident of the State of Missouri.

GEO. W. LUBKE.

Subscribed and sworn to before me this 10th day of March, 1894.
PHILLIP H. ZEPP.

And afterwards, at a term of the said Circuit Court, begun and held at the Court House, in the City of St. Louis and State of Missouri, on the third day of February, 1896, it being the first day of the February term, 1896, of said Circuit Court, were present: Hon. Jacob Klein, Judge of the said Court, Thomas B. Rodgers, Clerk of the said Court, and Henry Troll, Sheriff of the said City of St. Louis.

The Court was opened by proclamation.

And afterwards, and during the said term of the Court, the following proceedings were had in said cause, to wit:—

THURSDAY, *March 25th*, 1896.

96033.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Now at this day comes the plaintiff by attorney, but the defendant although duly notified by publication and having heretofore entered his appearance herein, and having this day withdrawn his answer herein and declined to plead further now comes not, but makes default:—wherefore on motion of plaintiff, it is ordered by the Court that the petition and attachment herein be taken against said defendant as confessed. Thereupon the Court finds that said defendant is indebted to the plaintiff on the several counts of the
1219 petition herein by reason of the instruments in writing sued on as follows:—on the first count in the sum of three hundred and thirty seven and 27/100 dollars, on the second count in the sum of twelve hundred and thirty eight and 98/100 dollars, on the third count in the sum of five hundred and eighty five and 80/100 dollars and on the fourth count of said petition in the sum of one hundred and sixteen and 58/100 dollars, making in the aggregate, the sum of two thousand two hundred and seventy eight and 63/100 dollars. It is therefore considered and adjudged by the Court that the attachment herein be sustained and that the plaintiff recover of said defendant the aggregate indebtedness aforesaid as found to be due, towit: said sum of two thousand, two hundred and seventy eight and 63/100 dollars, with interest on the sum of three hundred and thirty seven and 27/100 dollars (part and parcel of said aggregate indebtedness) from this date, at the rate of eight per cent. per annum until paid, and with interest on the sum of nineteen hundred and forty one and 36/100 dollars (the balance of said aggregate indebtedness), from this date, at the rate of six per cent. per annum until paid, and also recover of said defendant, his costs and charges herein expended, and that execution issue herein, in conformity with this judgment.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis (the same being a Court of record in and for said City and State), certify the annexed to be a true full and complete transcript of the petition, & affidavit, and judgment in case No. 96033, series A. of the said Court, entitled Samuel H. Leathe *vs.* Edward L. Thomas, as fully as the same remain in file and of record in my office.

1220 In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this Seventh day of March, eighteen hundred and ninety-eight.

[SEAL.] THOMAS B. RODGERS, *Clerk.*

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Jacob Klein, Presiding Judge of the Circuit Court of the Eighth Judicial Circuit Court of the State of Missouri (which Circuit is composed of the City aforesaid), certify that Thomas B. Rodgers, whose signature appears to the foregoing certificate, is, and was, at the time of signing the same, Clerk of the Circuit Court, City of St. Louis (the same being a Court of record in and for said City and State), and that the said attestation is in due form.

Given under my hand this seventh day of March, 1898.

JACOB KLEIN,
Presiding Judge of the Circuit Court
of the Eighth Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis (the same being a Court of record in and for said City and State), certify that Hon. Jacob Klein is Presiding Judge of the Circuit Court of the Eighth Judicial Circuit of the State of Missouri, duly commissioned and qualified.

1221 In Testimony Whereof, I hereto set my hand and affix the seal of said Court, at office, in the City of St. Louis, this seventh day of March, eighteen hundred and ninety-eight.

[SEAL.] THOS. B. RODGERS, *Clerk.*

I want to introduce the resolution of the Crown Coal and Tow Company of the first of March, and the tenth, 1894. I will read it. It appears on pages 39, 40 and 41, of this abstract. The one on page 40 is a Directors' meeting of March 10th, 1894. It reads as follows: "Whereas, the capital of this Company has been contributed in unequal proportions by various stockholders the distribution of stock having been made without reference to the stock contributed, and whereas, this Company was originally projected and organized by the parties interested in a certain railroad then known as the Belleville and St. Louis Railroad, and was known as the Belleville City Railway as an adjunct to said railroad; and whereas, it was originally

contemplated, understood and agreed by the parties interested in the formation and organization of this Company that all the amounts advanced by any of the stockholders of this Company should be repaid out of the proceeds of bonds to be issued by the said R. R. Company, and guaranteed in part by this Company, and that the stock of this Company should be subject to the indebtedness created by said bonds; or whereas, various of the stockholders of this Company, on the faith of the said agreement and understanding, have advanced large sums of money to this company and have conveyed to it property of great value, and whereas, a doubt has arisen as to the legality of such proposed endorsement or guarantee by this Company of the bonds of the said railroad company to the purposes of this Company, and said plan has been in consequence abandoned.

1122 And whereas, it is the desire of this company, that the true intent and meaning of said agreement and understanding be carried out, and that the persons conveying their money and property to this company on the faith thereof be protected.

Therefore it is resolved that the president of this company, deliver to each stockholder, who has contributed either money or property to the capital stock of this company, bonds of this company at par, to an amount equal to such contribution with interest from the date thereof to this date.

Immediately after the adjournment of the stockholders' meeting a meeting of the Directors was held, at which the president and secretary were directed to cause bonds and mortgage to be issued, as directed by the stockholders.

At a meeting of the Directors of March 10th., the following resolution was adopted:

Resolved, that the Union Trust Company, of St. Louis, trustee in mortgage given by this Company to secure its bonds be authorized and requested to make deliveries of said bonds as follows, to wit:

To Sam'l H. Leathe	$118,500.
To Bart S. Adams	10,000.
To John T. Taylor	4,000.
To Edward L. Thomas	5,000.

And of the balance of said bonds to S. H. Leathe, treasurer, $62,500.00.

The proceedings of the stockholders' meeting of March 25th., 1893, appear on page 125 of record.

The first action had at this meeting was to increase the capital stock from $30,000 to $200,000 and adding to the objects and powers of the corporation, then, after reciting that the sum of $8,900.

1223 had been paid upon the capital stock of the Company, as follows:

By Edward L. Thomas	$600.
By Taylor	500.
By Adams	6,300.
By Meisenburg	1,500.

It is resolved that full paid stock certificates be issued to said holders for said amounts."

This is the affidavit in the attachment case that I showed to Mr. Leathe, at the time of taking the evidence:

"STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, January Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
BART S. ADAMS.

Attachment.

Samuel H. Leathe being duly sworn, on oath says, that he, is the plaintiff in the above entitled cause, and that the defendant therein, Bart S. Adams, is justly indebted to him, after allowing all just credits and set-offs, in the sum of Five thousand six hundred and eighty-five dollars, and seventy-five cents ($5675.) That said indebtedness accrues by reason of a certain promissory note signed by said defendant and Edward L. Thomas and John T. Taylor for the sum of $4500., dated April 26th, 1893, by which note said defendant and said Thomas and Taylor promised to pay said sum of $4500. to one T. A. Meysenburg, sixty days after date, with interest at six per cent. per annum, and the payment of which note was guaranteed by said plaintiff.

1224 Affiant states that as such guarantor, he was compelled to and did pay said note, and that his present claim is for the amount thereof with interest.

Affiant further states that said defendant is a non-resident of the State of Illinois, but a resident of Old Orchard, St. Louis County, Missouri.

SAM'L H. LEATHE.

Subscribed and sworn to before me this 22nd day of December, 1897.

C. D. GREENE, JR.,
[SEAL.] *Notary Public.*

Term ends June 30, 1901. And I hereby certify that under the laws of Missouri, I have the authority to administer oaths.

C. D. GREENE, JR.,
Notary Public.

This is a certificate of purchase of Samuel B. Churchill, Jr., Trustee, *versus* Edward L. Thomas, Mary O. Thomas, and others. I want to call your attention to this: the receipt endorsed on this certificate dated March 23rd., 1895, is in Samuel H. Leathe's handwriting and is signed by him. I know his handwriting. The re-

ceipt on the back of the certificate, dated Belleville Ill., June 17th., 1895, is signed by Samuel Leathe, his son.

The certificate of purchase is as follows, to wit:

St. Clair County Circuit Court. In Chancery.

SAMUEL B. CHURCHILL, JR., Trustee,

vs.

EDWARD L. THOMAS, MARY O. THOMAS, ALEXANDER PFEIFFER, SAMUEL H. LEATHE, THE BELLEVILLE CITY RAILWAY COMPANY, THE BELLEVILLE & ST. LOUIS RAILWAY COMPANY, and THE CROWN COAL & TOW COMPANY.

1225 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Lucius D. Turner, Master in Chancery, in and for said County do hereby certify, that in pursuance and by virtue of the order and decree of said Court in said cause, made at the January Term, A. D. 1894, I did on Saturday, March 10th. 1894, according to previous notice given as required in said decree, offer for sale at public auction, at the front door of the Court House, in Belleville in said County, the lands and premises in said decree mentioned and involved, to the highest bidder for cash.

And Samuel B. Churchill, Jr., Trustee, having bid therefore the sum of three thousand and seventy-seven dollars and twenty eight cents, and that being the highest bid at said sale, they were then and there struck off and sold to him.

Said premises are situated in said County and State, and known as described as follows, to wit: Lot number seventy-two (72) on Hilgard's plat of the Cahokia Common Fields, as recorded in Plat Book "E" page 16, of the records of St. Clair County, Illinois. Also lot numbered three (3) of section nine (9) in Township one (1) North in Range nine (9) west of the P. M. as platted and recorded in Plat Book "A" on page 395 of the records of said County.

Now, if said premises shall not be redeemed within fifteen months from said sale, as allowed by the statute in such case made and provided, then the said Samuel B. Churchill, Jr., Trustee, his assigns or legal representatives will be entitled to a deed for the same.

Witness my hand and seal, in duplicate, at Belleville, St. Clair, County, Illinois, this tenth day of March, A. D. 1894.

LUCIUS D. TURNER, [SEAL.]
Master in Chancery.

1226 Chancery Record Z 50.
Date of Decree January 12/94.
Amount $2846.71.
Costs $230.57.

(Endorsements.)

MARCH 23, 1895.

In consideration of the sum of thirty three hundred and thirty two dolars and thirty four cents paid to me this day, I hereby transfer

all right, title and interest in the property herein described to Samuel H. Leathe.

SAM B. CHURCHILL, *Trustee,*
Pr. ELIZA A. DEAN.

MARCH 23, 1895.

In consideration of the sum of thirty three hundred and thirty two and 35/100 Dollars paid to me this day, I hereby assign and transfer all my right, title and interest in the property herein described to Samuel Leathe.

SAMUEL H. LEATHE.

SHERIFF'S OFFICE, BELLEVILLE, ILL., *June* 17/95.

Rec'd as redemption money in this case thirty three hundred and eighty five dollars.

SAM'L LEATHE.

I now offer in evidence the certificate of purchase, which certificate is as follows, to wit:

Whereas, Edward L. Thomas has certain claims against the Crown Coal and Tow Company, based upon what he claims to be his portion of the purchase price of certain coal pits which were turned over to said Company by him and his associates, and Whereas, a partial settlement of the said claims has heretofore been made and
1227 certain bonds of said Company were set aside to said Edward L. Thomas, as in satisfaction or settlement of a portion of said claims, in consideration of the surrender of whatever interest in said bonds the said Edward L. Thomas may have, it is agreed by the said Company that any former arrangement or settlement made between the parties, namely said Thomas and said Company, growing out of the said transaction, shall be considered as abrogated and annulled, and as though it had never been made, and the said Edward L. Thomas shall be relegated to any actions or suits that he may be advised may be proper for the purpose of adjusting and settling the difference between him and the said Company, growing out of the said purchase money or other moneys which he may claim to be due him on account of the transactions hereinbefore mentioned.

Dated this Eig-th day of November, A. D. 1895.

CROWN COAL & TOW COMPANY,
By S. H. LEATHE, *President.*

We ratify the above, this November Eighth, 1895.

SAM'L LEATHE, *Director.*
JOHN T. TAYLOR, *Director.*
BART S. ADAMS, *Director.*
FRED B. MERRILLS.

I now offer in evidence the opinion of the Appellate Court in the case of the St. Louis, B. & S. Ry. Co. *vs.* Edward C. Rice, reported in volume 69, page 244, Court of Appeals.

Objected to.

The opinion is as follows, towit:

1. Limitations—New promise by a corporation.—A new promise by one having authority to bind a corporation generally is
1228 sufficient to remove the bar of the statute of limitations as to such corporation. Assumpsit, for money expended.

Appeal from the Circuit Court of St. Clair County; the Hon. Benjamin R. Burroughs, Judge, presiding.

Heard in this Court at the August term, 1896. Affirmed.
Opinion filed March 3, 1897.
G. A. Koerner, Attorney for Appellant.
Edward L. Thomas, Attorney for Appellee.

Mr. Justice SCOFIELD delivered the opinion of the Court:

The evidence in this case is conflicting in many particulars, but the Court, trying the case without a jury, was justified in finding the facts to be as hereinafter stated.

In 1880 Charles W. Thomas held all the stock of the Belleville City Railway Company, except a very few shares which had been taken by some of his friends. He was Secretary of the Company. The nature and conduct of the business and the *attendnar* circumstances show that Thomas, who was the owner of about 490 of the 500 shares of stock, was authorized to act for the Company generally, and therefore to make such agreements on its behalf as he might deem proper. Accordingly Thomas authorized appelle- to buy a certain right of way for the Company for $1,500., and promised appellee for the Company that the latter should repay him the amount so advanced whenever the charter should be utilized. There was a transfer of stock to appellee under an agreement by which he was to become the owner of the franchise on certain conditions, but these conditions were not fulfilled and the stock was transferred by him to Thomas. This transaction does not affect the liability of the Company to pay its indebtedness to appellee in accordance with the agreement above mentioned.

Appellee paid $1500. for the right of way and caused it to be deeded to the Company.
1229 The only assets of the Company were its charter and subscription list, no part of the stock having been paid.

Thirteen years passed away and Samuel H. Leathe, of St. Louis, with others decided to build a railroad from East St. Louis to Belleville. Leathe was the leading spirit of the enterprise, and was induced by Thomas to act under the charter of the said Company, inasmuch as the provisions of the charter were especially liberal.

He was informed by Thomas that the $1,500. due appellee, and $500. due himself must be paid by the Company, and Leathe acquiesced in this requirement.

At the beginning of the negotiations, when Mr. Leathe examined the charter of the Company in the expectation of becoming a purchaser of all the stock, with the exception of a very few shares, the indebtedness of the Company to appellee was explained to him, and he was informed that if he got the stock, the Company must pay the

amount due appellee without interest. Leathe agreed to do this. Everybody connected with the Company understood the matter thoroughly at the time.

Certain meetings of the stockholders and Directors were afterward held for the purpose of making arrangements for perfecting the transfer.

In contemplation of the building the road under the new management, the capital stock was increased to 5,000 shares of $100. each, and the issuance of bonds, secured by mortgage, to the amount of $500,000. for the purpose of raising money to build the road, was ordered. At a meeting of the Directors held on March 25th., 1893, a call of one hundred per cent. on the capital stock was made, payable on or before May 1st., 1893. Thereupon Leathe appeared before the Board and proposed to sell and convey to the Company certain property for $499,500. and the Board accepted this proposition on certain conditions, and accepted this deed as payment of the call on his 4,995 shares, provided he would float the bonds
1230 of the Company, and account at their par value for all bonds he might take or use in paying for property or prior indebtedness of the Company.

The evidence shows that this indebtedness was talked over at the time and included the $1,500. due appellee.

Leathe was required to sign and did sign the record of these proceedings for the purpose of showing his acceptance of the terms of the transfer.

Leathe became the owner of 4,995 shares of the 5,000 shares of stock, and at a meeting of the stockholders was duly chosen president. Thomas continued to act as secretary. There were seven directors. Waddock, one of the directors, tendered his resignation to Leathe about August 1st. but the resignation was not acted upon or accepted by the Board till after the meetings of August 9th. and 11th. and he was therefore authorized to meet with the board as one of the directors of those meetings.

Leathe authorized Thomas to call a meeting of the directors for August 9th. This was done, and a quorum was presented at the meeting, but the board adjourned till the 11th. without transacting any business, and notice of the adjourned meeting was given to the other directors.

At a meeting on August 11th. a resolution was passed directing the payment of $1,500 to appellee, as previously agreed upon.

Thomas, who had been acting for appellee all this time, with reference to his claim, immediately notified appellee of this resolution.

Leathe was not present at either of these meetings, and insists that they were not lawfully called.

Afterward on January 24th, 1894, appellee called on Leathe and demanded payment of the $1,500. due him, and Leathe answered that the company would pay it in less than two months.
1231 The evidence on many of these questions is conflicting.

The backbone of appellant's evidence is the deposition of Samuel H. Leathe, and that of appellee's evidence is the testimony of Charles W. Thomas. Leathe testified as if he was trying to conceal something, while Thomas testified fairly and frankly. The

trial Court can not be censured for accepting the version of the transactions given by the witness Thomas.

At a meeting of the Board, on August 26th., 1893, Leathe caused a resolution to be passed rescinding the proceedings of the meetings of August 9th. and 11th, and accepting Waddock's resignation.

From the foregoing facts it is clear:

1. That in 1890 the Belleville City Railway Company became indebted to appellee in the sum of $1,500.

2. That prior to 1893 appellee's claim was barred by the Statute of Limitations.

3. That the series of transactions in 1893, from the first conversation between Thomas and Leathe to the resolution passed at the meeting of the Board on August 11th, shows beyond question a new promise on the part of appellant to pay the amount due appellee, which is sufficient to remove the bar of the Statute of Limitations.

4. That on January 24, 1894, Leathe who owned nearly all of the stock and was the corporation for all practical purposes, and had authority to bind appellant by his promise on its behalf, promised appellee that appellant would pay his demand within less than two months, which promise is sufficient to remove the bar of the Statute of Limitations.

5. That the resolutions passed on August 11th., which were valid when made, could not be rescinded by the action of the Board at a subsequent meeting so as to affect the rights of appellee.

It is said, however, that, even if appellant promised to pay the amount sued for by appellee, yet such promise was a conditional one, and was to the effect that appellee was to be paid out of the
1232 proceeds of the sale of the bonds, and that there is no evidence to show that the bonds have been sold.

Without conceding that the promise was conditional, it is sufficient to say that there is an abundance of evidence in the record to show that the bonds were sold two years at least before this action was commenced.

The bonds were issued in 1893, and were placed in Leathe's hands under an agreement by him that he would float them and account for the proceeds. In the same year, according to the uncontradicted testimony of appellee, and the concession of counsel for appellant in his brief, the road was built from East St. Louis to Belleville. It may be fairly inferred that, inasmuch as the road could not be built without money, and appellant had no resources for that purpose except money to be obtained by the sale of its bonds, the bonds must have been disposed of by Leathe during the year 1893, before the road was constructed.

If this was not the fact, Leathe had the opportunity to say so in his deposition when the question was asked him by appellee's counsel, on the ground that the question was irrelevant.

We hold that the record shows that the bonds were sold in 1893, and the condition upon which the payment to appellee by appellant was to be made was thereby fulfilled; also that the promise made on January 24th., 1894, was unconditional.

It is further urged that there is no evidence to connect appellant

with the Belleville City Railway Company. Appellant proved by Samuel H. Leathe that after he had become a stockholder, the name of the company was changed from the Belleville City Railway Company to the St. Louis, Belleville & Southern Railway Company, and appellant will not be permitted to assert now that the testimony of its witness is untrue or incompetent.

It is assigned for error that the Court erred in holding and refusing certain propositions of law, but this assignment will
1233 be treated as having been waived, for the reason that counsel for appellant has not pointed out in his brief or argument filed herein any objections to the rulings of the Court on the propositions of law.

The judgment is affirmed.

Mr. KOERNER: You hadn't any conversation with Mr. Leathe subsequent to March 25th., 1893, did you?

A. I had very few. I had one or two in the summer time, I had very few because shortly after that, in May, I quit the work entirely. There were some cases up, concerning rights of way more than anything else.

Q. Your relations were not unfriendly during the summer of 1893, were they?

A. After May.

Q. Wasn't it after August?

A. No, we were not friendly any more after May. We had no business transactions except one thing that I did for him. I got right of way for him.

Q. Well, you did other things for the Company?

A. I did it through Mr. John Holmes. I had very little conversation with Mr. Leathe, in fact, none except about the details of things and rights of way, such as that.

Q. You brought suit against the Crown Coal & Tow Company in this agreement that you last submitted in evidence?

A. Yes, that is one of the foundations of suit, partly.

Q. That suit is still pending?

A. Still pending.

Q. How much is there involved, Mr. Thomas?

A. The amount of the decree is $6300.00.

Q. Have you brought any other suits against Mr. Leathe,
1234 of the Crown Coal & Tow Company or the St. Louis, Belleville & Southern Railway that were disposed of?

A. One. Except in this one. I have one ejectment suit for a little piece of land at the foot of the bluff, near the foot of the bluff, which is worth, I presume, four hundred dollars.

Q. Have you instigated other persons to bring suits against Mr. Leathe?

A. I am not interested in any suits any more than I have an interest in. I have a suit pending in the name of Bart S. Adams and John T. Taylor *vs.* Crown Coal & Tow Company.

Q. You have an interest in that case?

A. Yes, it is an interest between us three Mr. Adams, Mr. Taylor and myself.

Q. Did you cause that suit to be brought?

A. I certainly did. That is to say, I did not know that I was the only one. All of us had a hand in it.

Q. Then suit is still pending?

A. Yes, sir, in the Appellate Court.

Q. Do you know of any other suits brought by Adams and Taylor or either of them against the parties that I have mentioned?

A. Yes, there is a suit pending in the Circuit Court here for the amount of, I presume, twenty three or twenty four hundred dollars, somewhere along there, I can't tell exactly.

Q. Against whom is that suit?

A. That is against the Crown Coal & Tow Company.

Q. Did you have anything to do with the bringing of that suit?

A. Oh, yes, Mr. Holmes, Mr. Bart S. Adams and Mr. John T. Taylor we found it necessary. I wish to state that I sought for a settlement of this matter and negotiated through Mr. Holmes for a settlement.

Q. Did you ever ask Mr. Leathe for a settlement under the terms of the contract of January 24th, 1893?

A. No, sir, all I asked for was that the Crown Coal & Tow
1235 Company matters be settled, a settlement of that, not of this railroad matter.

Q. At the time of his suit, do you know of suits pending by Taylor and Adams against Mr. Leathe?

A. I knew of a suit pending in the United States Court.

Q. Do you know what they were for?

A. These same matters. The one was for these $11,000. spoken of, these bonds and so forth and his interest in the railroad that he had put in Mr. Adams' name.

Q. There is still another suit by Mr. Adams in St. Louis under the contract of January 24th?

A. I don't know that.

Q. You say that you did not know that Mr. Adams had brought suits in St. Louis?

A. I knew he had tried one and the referee decided against him. I read his opinion and I don't recollect——

Q. That is the $11,000.00 suit?

A. That is the one I had reference to.

Q. Don't you know of this one?

A. I don't know of that one.

Q. Did Mr. Adams tell you he brought this suit?

A. I don't think he did.

Q. Do you know it from Mr. Holmes?

A. Mr. Holmes told me he was going to bring that suit, but what he told me about I do not know. That is about all he told me that he was going to bring suit. We didn't mention any special suit.

Q. Did not you know at the time you brought this suit that there was Judgments against Mr. Leathe of Mr. John M. Holmes and Mr.

G. A. Koerner which were for services claimed to have been rendered to him?

A. I heard that but I did not know that it was against the two companies. I heard Holmes say they were individual.

1236 Q. But for services rendered?

A. I didn't know that at the time the suit was brought against me. I did not bring this suit. I thought it was for individual services, but Mr. Holmes told me that it was for arbitration, consented to by Mr. Leathe to arbitrate any of those matters.

Q. That is matters in which the parties named claimed Mr. Leathe was responsible for the services rendered to the Company?

A. No, I don't think that is the claim. I think the claim was for services performed for the Company and for him. I do not know that.

Q. Do you know the amounts of judgments for G. A. Koerner?

A. One amount was $5,800. and the other $10,080.

Q. You know perhaps that they are not disposed of?

A. I don't know that. I know that, probably there was an appeal taken. I don't know it, only from hearsay.

Q. Do you know of some suits which have been brought in this Court by Mr. P. M. Gundlach, either against Mr. Leathe, or either of these Companies for matters which have been lately disposed of?

A. I know of a suit on an appeal bond. That I think is the only one P. N. Gundlach had anything to do with.

Q. That was in a matter arising out of this enterprise?

A. That was a final appeal taken by Mr. Leathe from a decision in the Circuit Court.

Q. Do you know when that was disposed of?

A. It must have been this last spring or summer, because the execution was out when Col. Andel was away, and he went away in May, it must have been in the April term of Court last year, anyhow it was paid in the summer or fall to the sheriff. It amounted to some three of four hundred dollars.

Q. That Henry T. Kent note, was that one of these three notes or four notes of $750.00 each?

A. There were four originally, but Henry T. Kent's was
1237 divided, the amounts were divided. It was given in two notes, one for $500. and the other for $250.00.

Q. Henry T. Kent put up that money?

A. He came to me and put up the notes.

Q. Who did he put up the money to?

A. He gave it to me for the use of the railway.

Q. Mr. Leath was compelled to, was he, in some way?

A. He did it for the purpose of getting a hold on me. There was no liability for him to pay it at that time.

Q. There was then a contingent for him to pay it?

A. There was mention made in that letter as to its being a part of the debts.

Q. It was of the same character as the indebtedness mentioned in the agreement of January 24th, in which he would have to pay money?

A. It is a portion, but the difference was, Gould had some bonds up.

Q. What do you call the Gould portion?

A. Why, the note of the Third National Bank?

Q. The indebtedness was of the same character?

A. Of the same character. The only reason it was paid was to get these bonds.

Q. And also Josephine Johnson's?

A. That was because she had bonds also. We wanted to get all the bonds and she had two thousand given to her by Captain Adams.

Q. You wrote that agreement yourself, did you?

A. I had it written.

Objected to all this evidence as not proper cross-examination.

Q. You have stated that Mr. Leathe rendered a copy as being an account of this transaction, in connection with his expenditures and receipts in behalf of these two corporations? The St. Louis Belleville & Southern and the Crown Coal & Tow Company?

1238 A. I have what purports to be a copy.

Q. Where did you get it?

A. I had it sent to me, by Mr. Smith.

Q. Who is Mr. Smith?

A. He was attorney for Mr. Taylor in a case in St. Louis against Mr. Leathe.

Q. He told you it was a copy of the account that Mr. Leathe there furnished?

A. He did not tell me it was a copy. He told me that the person who made it said it was a copy. He said he had gotten some person to make it and he sent it to me as one of the copies at that time made.

Q. How long have you had that, Mr. Thomas?

A. I think I got it sometime during December, 1898, I am not certain.

Objected to.

1239 *Agreement of S. H. Leathe with the First National Bank.*

BELLEVILLE, ILL., *Feb.* 27, 1893.

I, the undersigned, having this day received from the First National Bank of Belleville the following described bonds of the Belleville & St. Louis Railway Company, to-wit:

11 Bonds, numbered 59 to 69 (both inclusive).
30 Bonds, numbered 70 to 99 (both inclusive).
21 Bonds, numbered 100 to 120 (both inclusive).
27 Bonds, numbered 122 to 148 (both inclusive).
1 Bond numbered 150.

said bonds being pledged to said First National Bank of Belleville to secure several promissory notes, namely:

One note of $700.00 dated September 1st, 1891, signed by Edward L. Thomas and endorsed by Mary O. Thomas.

One note of $300.00 dated September 1st, 1891, signed and endorsed by the same parties.

One note of $4000.00 dated September 1st, 1891 signed by Edward L. Thomas and endorsed by Mary O. Thomas, and George Vogt.

One note of $1500.00 dated October 30th, 1891, signed by Edward L. Thomas and endorsed by Mary O. Thomas.

One note of $1200.00 dated December 1st, 1891, signed by Edward L. Thomas and endorsed by Mary O. Thomas and Charles Becker.

One note of $500.00 dated November 5th, 1892, signed by Edward L. Thomas and endorsed by C. Andel.

amounting in the aggregate to $4,650.00, hereby promise and agree to return the said bonds to the First National Bank of Belleville within six months from this date, or place in their stead twenty-five thousand dollars worth of new bonds to be issued in
1240 lieu of these Bonds, in the hands of the First National Bank, or pay the above described notes together with interest at the rate of 7% per annum. All of the above described notes bear interest from August 1st, 1892, except the last described note of $500.00 which bears interest from November 5th, 1892.

The above insertion made with my consent before signing this instrument.

(Signed) S. H. LEATHE.

1241 STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Assumpsit.

Evidence of Jacob Voellinger, A. H. Bachmann, and L. D. Turner taken before M. W. Weir, Referee, at the office of the said M. W. Weir, on Monday, January 7, 1901, there being present Mr. G. A. Koerner, representing the plaintiff and Mr. E. L. Thomas, representing the defendant.

JACOB VOELLINGER, called in behalf of the defendant, testified as follows:

Direct examination by Mr. THOMAS:

Q. What is your name?
A. Jacob Voellinger.
Q. Where do you live?

A. Stookey Township.

1242 Q. What is your business, Mr. Voellinger?

A. Farming.

Q. Do you know the Coal Company and the Railroad Company that Mr. Leathe was connected with?

A. Yes, sir.

Q. Did you ever have occasion to sell land to Mr. Leathe for the Coal Company?

A. Yes, sir.

Q. How much?

A. I think there was somewhat over three acres.

Q. What did he give you for it?

A. Well, it was not exactly three acres and a half, I think near three acres and a half, I don't know exactly how much there was, and then there was an under road crossing yet in there, that was embodied into that; that was for the under road crossing and for the tract of land I got $500.00.

Q. What became of that tract of land?

A. Well, he had that for about two years and then I bought it back again.

Q. What did you give him for it?

A. I think I gave him $375.00 but understand he kept the under road crossing.

Q. $375.00 you paid back to him?

A. Yes, sir, I bought back the same piece of land.

Q. And you knocked off $125.00 on account of the under road crossing?

A. I tell you what I did, I knocked off the under road crossing for $75.00 and $50.00 was for that old shaft that is there. There was an old shaft there and I gave him $425.00, if he shut up the shaft, but he left the shaft for me, and so I gave him $375.00.

Q. Out of the $500.00?

1243 A. Yes, sir.

Q. What amount did he give you the last time, for the gross sum, for the coal?

A. I am not positive, I believe $6300.00.

Q. That is what he paid you?

A. Yes, sir, the last I got, and then before that I got $2500.

Q. He first paid you the interest for your land and then you got $6300.00?

A. $6300.00. I do not know whether it amounts to that or not, what the difference was.

Q. It was $6300.00 that you got?

A. Yes, sir.

Q. This transaction was between you and Mr. Leathe individually; it was an individual transaction with you, was it not, you made the deed to him?

A. I will leave that to Mr. Weir, he can judge himself what it was, by the looks of it. You can tell whether it was Company or not, I will state nothing about it (handing Mr. Weir the deed).

Mr. WEIR: That is to Mr. Leathe individually, yes, sir.

Mr. KOERNER: Whether it was Company business or not you do not know?

A. That is all I have got to show for it.

ADAM H. BACHMANN, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. THOMAS:

Q. What is your name?

A. A. H. Bachmann.

Q. Where do you live?

A. Salem, Illinois.

1244 Q. Do you know Samuel H. Leathe?

A. Yes, sir.

Q. Do you know Thomas Marshall?

A. Yes, sir.

Q. Just state what connection you had with Thomas Marshall, in relation to the sale of some tax lands in this county?

A. I am doing the business as his agent you know. I do the notifying and advertising, in fact, all of the business, he has nothing to do with it, it was only bought in his name. The business was done by me, all of it.

Q. Now, Mr. Bachmann, do you remember of purchasing any property in which the railroad company and Mary O. Thomas were interested, for the taxes of 1893?

A. Well, yes, I looked it up some. I made some assignment of several lots, Lot 3, Northeast section nine One North west and a lot in the Southwest quarter of section six Northwest, I believe, and that lot 72 in Cahokia Common fields, I have looked it up a good many times.

Q. Now, what transactions other than that, did you have with Mr. Leathe relating to the taxes?

A. I made an assignment to him some time. I couldn't tell you exactly, I could tell exactly if I had my books what time it was, but some time when I was advertising, some time before the two years expired, I notified Mr. Thomas, I notified Gundlach and notified Mr. Leathe; and the Belleville City Railway Company I believe was interested in it, somehow, and I notified all of them and Mr. Leathe wrote me that he wanted an assignment of this certificate, to certify the interest, which I readily agreed to do, and he paid the money through the bank, and I got something like $471.71, it might be a dollar or more interest on it, I cannot tell the exact amount, but it was about that, and then he wanted me to go ahead and

1245 make a deed to him, and deed it to him, you know, but he paid me the money before that, you understand, and I agreed to make the deed and he paid me for the trouble of taking the deed, maybe five or six dollars, something like that, but he paid me the principal of it, whatever the amount came to, some months before, five or six months, I guess, and then after the time had expired, I went to work and took the deed and then deeded it to Mr. Leathe and of course he simply paid me for making the deed, which was not to

exceed five, six or say ten dollars, not over that, in fact, I never charge over that.

Q. Did you ever receive from Mr. Leathe two sums, of $170.00 and another of $104.00?

A. No, that could not positively be, because I had a personal conversation with Mr. Leathe myself, I was acquainted with him and went to St. Louis to see him. He was in the Security Building, or the Lacledo Building, on the corner of 4th and something; anyhow, I know Mr. Leathe. I went to his office to notify him.

Q. He wanted you to hold the certificate after he paid the money and then get a deed on it and then pay it to him?

A. Yes, sir.

Q. You did that, and then deeded it to him, or to his son, did you?

A. I don't know exactly, I took the deed and he paid me. I don't know the amounts exactly how each one figured up, I know he paid me whatever the amount was.

Cross-examination.

By Mr. KOERNER:

Q. What other claim are you talking about, of $171.00?

Mr. THOMAS: He charged us double, you know, like everything else, he charged us $170.00 and then $470.00 for this tax title.

WITNESS: I can't see how that would come, because he charged them for taking the deed. You know he might have paid
1246 me seven or eight dollars, whatever the deed said that is what I got of course, I did not get any such amount as that; it would not exceed six or eight dollars, whatever it would cost, that is all charged, that is what I charged anybody, that is the way it was done, in the business.

Q. Did you have any dealings with Mr. Marshall?

A. Mr. Marshall don't know anything about it. If you would write him, he would tell you to see Mr. Bachmann, he can tell you all about it. He did not attend to the business. In fact, I saw Mr. Leathe in St. Louis when I notified him and the Belleville City Railway Company and Mary O. Thomas, and I gave the notices and I saw Mr. Leathe and notified him, and he said he wanted an assignment of it, and then he said he wanted me to take a deed, which I did. I did not know exactly what the amount was, because you know there were subsequent taxes paid, and I couldn't swear to a dollar, you know. I know on the southwest quarter I paid taxes there for 1896 and 1895. All the others were sold in 1893, and we paid the taxes for 1894 and 1895.

You see, they settle for the taxes of the previous year, you understand that. I know I paid $56.44 in the year 1895 on that. On the others there was just two years taxes to be paid by me and on that one tract I paid three years.

Q. Wasn't there some correspondence about that, before you made this deed?

A. I could not just say. I was in St. Louis and saw Mr. Leathe, you know, and I notified him.

Q. Was there not some correspondence about it?

A. Oh, there might have been. He sent the money through our bank.

Q. Prior to that, wasn't there a correspondence between you and me about it?

A. I couldn't tell you. With as much correspondence as I have. I wouldn't swear to any correspondence. We might have had
1247 some correspondence as to that business, I don't remember whether I wrote letters about it or not, I write so many, I write hundreds of letters. We had some correspondence at the time, but I don't remember anything about it.

Q. When did you make the acquaintance of Mr. Leathe?

A. The time I notified him about the lots.

Q. Did you make the arrangement at that time?

A. Well, I do not know, because you know a man that notifies fifty people in one day couldn't say everything that occurs.

Q. Did you see him more than once?

A. I saw him since that several times, I notified him since that. The- have sold that land since and I saw him since that, but in regard to that business, I do not think so.

Q. You do not think you saw him more than once?

A. At that time, I did not think so. I might have seen him more, because there are other things, I have a good many things to do.

Q. Who was present at that time?

A. I couldn't tell you.

Q. Was anybody present?

A. I couldn't tell you, there might and there might not, I did not pay any attention to that.

Q. When was that?

A. That was in 1895.

Q. What time in 1895?

A. Why, when I notified what was sold in 1893. It was in January or February, 1895, it must be before the two years expired.

Q. You say then that this conversation you had with Mr. Leathe was in January or February, 1895?

A. To the best of my knowledge, because I always notify, not less than three months nor more than five months before the two years expire; I couldn't give the exact date when I notified
1248 Mr. Leathe, but I know it was in January or February.

Q. You notified him when that assignment was made, before that or afterwards?

A. I couldn't say exactly, I haven't got my books. In my book, I can tell when the assignment was made and when I sent him the bill, and everything.

Q. Is it not true that Mr. Marshall had some correspondence with Mr. Leathe about it?

A. If he did he would have notified me, because Mr. Marshall don't do anything in that business except under my direction. Of course this was brought in Mr. Marshall's name, and Mr. Mar-

shall got the money for it, but I did this business for him, and everything was done under my direction, all of it.

Q. It was Mr. Marshall's money, was not it?

A. No, sir, it was not Mr. Marshall's money.

Q. I thought you swore you were his agent?

A. Well, I suppose I am, but it might be his money or mine, that is immaterial, because I always am doing the business, that has nothing to do with this case.

Q. What I wanted to know was, because you said that you were acting for Mr. Marshall?

A. Well, I was acting for Mr. Marshall, because this was in Mr. Marshall's name and he afterwards assigned it to me, but the records do not show it, and I was doing the business just the same as if I was doing it for Mr. Marshall, but Mr. Marshall assigned it to me, but the records did not show it, and so I went on doing it all the time for Mr. Marshall, because the records showed it was Mr. Marshall's, but it was my transaction, as a matter of fact.

Q. You were doing it in Mr. Marshall's name, as his agent?

A. No, sir.

1249 Q. Or for yourself, using Mr. Marshall's name?

A. No, sir, there were some pieces bought for taxes by Mr. Marshall; He bought some and I bought some and various other people bought some, and some of the people I bought out after the sale, there were several of them, and Mr. Marshall was one of them and of course I notified and advertised back this was all in Mr. Marshall's name. It was all right because we were together there. You know the bank is right next door to my place and we see one another at any time and are both responsible?

Q. What is your business, Mr. Bachmann?

A. I am in the real estate business and have got a furniture store, I have got a dry goods store and I've got several pieces of land and several things I am connected with. I don't run all of them myself.

Q. You do the buying up of tax titles in St. Clair County?

A. Well, some of them. I do at a good many points, and I do some myself and I have some men hired, a good many fellows.

Q. You are hired by some others to buy for them?

A. No, sir, I buy for myself.

Counsel for defendant then gave in evidence a release deed from Samuel H. Leathe to Mary O. Thomas, dated November 17, 1895, and recorded in book 236, page 521, which deed is as follows, to-wit

"Whereas Phillip M. Gundlach did on the 16th. day of March A. D. 1895, in the Circuit Court of St. Clair County, Illinois, obtain a certain decree of foreclosure of a mortgage then by him held upon the S. W. ¼ of Section 11 in township one (1) North, range nine (9) West, in said County of St. Clair, owned by Mary O. Thomas; the said decree being for the sum of $13,642.33.

And whereas Anthony Pfeiffer did at the April term 1894, of said Court procure a decree of foreclosure against the same

property under which decree the same was on the 8th day of
1250 September 1894 sold for the sum of $2578.92 subject to the aforesaid mortgage of said Gundlach.

And whereas one Alexander Pfeiffer did at the same term of said Court procure a decree of foreclosure against the said land, under which decree same was sold on the 8th day of September 1894 for the sum of $1598.79 subject to the two (2) mortgages above mentioned.

And whereas on the 12th. day of January 1895 the said land was sold by Sheriff of said County under executions then lawfully in his hand to one Samuel H. Leathe for the sum of $3743.74; the said judgments being one in favor of Elizabeth Underwood for $1184.72 and one in favor of Elizabeth Underwood for $1794.58, and one in favor of the Belleville Savings Bank for $618., and all rendered at the September term 1894 of the said Court.

And whereas, the undersigned, Samuel H. Leathe, is now the owner of the said decree in favor of said Phillip M. Gundlach and of all the certificates of purchase issued under the sales hereinbefore mentioned.

Now, therefore, I the said Samuel H. Leathe, in consideration of $1.00 to me paid by the said Mary O. Thomas do hereby forever release the said land from the said decree in favor of the said Gundlach, and from all and every lien and title thereon or thereto created by the said certificate of purchase. This release shall enure to the benefit of the Crown Coal and Tow Company and the St. Louis, Belleville and Southern Railway Company.

In witness whereof I hereunto sign my name and affix my seal this 7th day of November, A. D. 1895.

S. H. LEATHE. [SEAL.]

1251 STATE OF MISSOURI, *City of St. Louis, ss:*

I, T. G. Rombauer, a Notary Public within and for the said City do hereby certify that Samuel H. Leathe, widower, who is personally know to me to be the same person whose name appears signed to the foregoing deed appeared before me this day and acknowledged that he had executed the same freely and voluntarily for uses and purposes therein expressed.

In witness I have hereunto signed my name and affixed my notarial seal at my office in the said City of St. Louis this 8th. day of November A. D. 1895. Commission expires January 14th., 1897.

T. G. ROMBAUER,
[SEAL.] *Notary Public.*

Filed for record November 9th. 1895, at 1.55 o'clock P. M."

It is agreed that the evidence taken in St. Louis before Judge Dillon is to be considered in evidence in this case, so far as applicable.

L. D. TURNER, called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. THOMAS:

Q. State your name?
A. L. D. Turner.
Q. What is your age?
1252 A. Fifty one.
Q. Where do you live?
A. In Belleville.
Q. And you are an Attorney at law?
A. Attorney at law.
Q. And know Mr. Koerner?
A. Very well.
Q. Did you ever have any conversation with him, at the time you will remember, the arbitration he had with Mr. Leathe?
A. In his individual case?
Q. Yes.
A. I remember I was a witness for him as to the value of his services.
Q. I want to ask you if you had any conversation with him at that time about Mr. Leathe?

Objected to.

A. I can answer the question that I had a conversation with Mr. Koerner.
Q. Now I want to ask you this question: Did Mr. Koerner say to you at that time, words to this effect, that he, Koerner, had never known a bigger liar or a damnder liar than Samuel Leathe, old man Leathe?

Objected to.

Mr. THOMAS: I will read this question to you for your information: "Now, Mr. Koerner, in the trial of this case, the arbitration case, did you go to Don Turner, Attorney at Belleville, during that time, and desire him to attend to the trial of that case, for the purpose of impeaching Mr. Leathe for veracity?
A. No, sir.
Q. You did not? Did you say to Don Turner at that time words to this effect, that you had never known a bigger liar or damned-old liar than Leathe?
A. No, sir.
1253 Q. You did not? Well, were you present at any time in the last six or eight months, with Edward L. Thomas and Don Turner, in Don Turner's office, when Don Turner stated to you what you had said and you said that was all right that the conditions were different?
A. Some joking remarks there occurred in the office." Now, Mr. Turner, I want to ask you if those statements, made by Mr. Koerner are true or untrue.

A. Well, you have got the statement to be read there.

Q. Well, I say here, did you not say to Mr. Turner at that time words to this effect, that you never knew a biggar liar or a damned old liar than Leathe, is that true?

A. I do not think he said it that strong.

Q. How did he put it, were the words to that effect?

A. I want to explan the whole conversation: I do not think Mr. Koerner came to my office. It was somewhere I tried to get him to state and he said he never had anything of the kind. It was in this way. I knew that Mr. Koerner ought to be paid for his services and I knew about what he had done, and we were talking about the case, and I think I made the remark to Mr. Koerner, that I did not put much confidence in Leathe, I thought he was not very reliable, and Mr. Koerner, in that conversation to me, I do not think he used profane language, but he just made the remark that he was a great liar, but now I don't know—I think I ought to claim the privilege on that myself, because Mr. Koerner was talking to me, perhaps, as a friend.

Q. Was he joking when he said it?

A. No, he was not joking in the sense that you mean a joke. Mr. Koerner was not treated right by Mr. Leathe, and he felt it. I want to get at the facts. Mr. Koerner had no particular ill will against Mr. Leathe, he meant that Mr. Leathe was not treating him
1254 right, and he was not, what he meant, he did not tell the truth.

Q. He was a liar?

A. I think he was.

Cross-examination.

By Mr. KOERNER:

Q. If we had any conversation about that matter at all, it was a private conversation?

A. Undoubtedly, between you and me.

Q. And the remark was casual in its nature, you do not mean to say that it was a remark which was made, any more than as we are in the habit of using loose language in talking about people?

A. Well, that is, that you felt that he was not treating you right and had lied about not owing you anything, you felt that, and had a right to feel that way.

Q. Of course I felt that he was not treating me right but there was no matter, he did not deny, you know, that I had done service for him.

A. Well, he came pretty near denying it. He insisted upon having paid you all that it was worth and all that sort of thing. He came pretty near denying that he owed you any more money than what he paid you.

Q. Well, yes, that may be.

A. He did not treat you right and you felt sore over it, as you had a right to feel, but as I say, it was a mere private conversation. What you said was undoubtedly the truth, as we knew it at that time,

that is all, but it is not as strong as he put it. I do not think you were profane about it.

1255 Q. It was that, if he was denying what I had said or claimed that he was a liar?

A. Unquestionably, yes, sir, we were talking about that case.

Q. And giving his evidence, that is what Mr. Thomas meant, was it?

A. I don't know that Leathe had given evidence.

Mr. THOMAS: I don't think that Mr. Leathe had given any evidence.

A. He did not use profane language. And that was in St. Louis or on the road over here.

Mr. THOMAS: It was in regard to that case?

A. Yes, sir, in that case. It was not in my office at all, and I cheerfully joined in with him, because I thought so.

The foregoing was all the evidence taken before the Master at this time.

1256 ED. THOMAS
vs.
ST. L., B. & S. RY. CO.

Received of Elbert H. Gary as agent for certain principals Forty Four Thousand One Hundred Thirty One and Fifty Seven One Hundreths ($44,131 57 100) Dollars in full payment for Ten Hundred and Twenty (1020) full paid shares of the Capital Stock of St. Louis Belleville & Southern Railway Company (formerly the Belleville City Railway Company) and also Four Hundred and Eight (408) full paid shares of the Crown Coal & Tow Company (formerly the Crown Coal Company) and in full payment of all claims against said Companies, or either of them, or their property or any part thereof.

And I do hereby sell assign and transfer unto said Elbert H. Gary as agent for certain principals all and each of the said shares of stock and direct that Certificates of the same be duly issued to them.

And I hereby represent and warrant that I have the full title to and the lawful right to transfer as above all of said stock.

(Signed) CHARLES W. THOMAS.

Certificate for the above shares of Capital Stock of said Companies were never issued, but the said stock belongs to said Chas. W. Thomas and he has the right to transfer it.

(Signed) S. H. LEATHE,
President both the above Corporations.

$50,000.
5,868.43

$44,131.57. Leathe's judgment deducted.

I also for the consideration aforesaid assign to said Elbert H. Gary agent as aforesaid, one share of the Capital Stock of the St. Louis

Belleville & Southern Railway Company and one share of the Capital Stock of the Crown Coal & Tow Company now standing in the name of Henry M. Needles, and agree to deliver the same.

(Signed) CHARLES W. THOMAS.

November 8th 1895.

1257 And thereupon the said Court, having heard the evidence, overruled each and every one of the exceptions taken by plaintiff to the report of the Referee, and plaintiff, by his attorney, then and there excepted to the said ruling of the Court in overruling said exceptions, and separately excepted to the overruling of each of *of* said exceptions, and the Court sustained the report of the Referee to which ruling of the Court plaintiff, by his Attorney, then and there excepted; and ther-upon the Court rendered judgment in favor of the defendant and against the plaintiff in the sum of $71,226.37. And plaintiff, by his counsel, then and there excepted to the ruling of the Court as to the entering of said judgment.

And inasmuch as the matters and things hereinbefore set forth do not all nor as fully appear of record, the said plaintiff, Samuel H. Leathe, present- this, his bill of exceptions, and prays the same may be signed and sealed by the Judge of the Court, which is do*en* accordingly this 4th day of August 1902.

M. W. SCHAEFER, [SEAL.]
Circuit Judge.

Filed August 4th, 1902
THOMAS MAY, JR.,
Circuit Clerk.

1258 Be it remembered that the following is a true and correct copy of the Appeal Bond filed in this case to-wit:

Know all men by these presents:—That we Samuel H. Leathe as principal and Fidelity and Deposit Company of Maryland (a corporation of the State of Maryland) as surety are held and firmly bound unto Edward L. Thomas in the penal sum of Eighty Five Thousand Dollars, for the payment of which well and truly to be made, we and each of us, bind ourselves, our heirs and executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 12th day of August in the year of our Lord One Thousand Nine Hundred and Two.

The condition of the above Obligation is Such, That whereas the said Edward L. Thomas did on the 30th day of June One Thousand Nine Hundred and Two at a term of the Circuit Court then being hold*ing* within and for the Third Judicial Circuit in the County of St. Clair and State of Illinois, obtain a judgment against the above bounden Samuel H. Leathe and his pleas of set off for the sum of Seventy One Thousand Two Hundred Twenty six Dollars and Thirty seven Cents, and costs of suit from which judgment the said Samuel H. Leathe has prayed for and obtained an Appeal to the Appellate Court in and for the Fourth District of said State.

Now if the said Samuel H. Leathe shall duly prosecute said Appeal and shall moreover pay the amount of the said judgment, costs, interests and damages, rendered and to be rendered against him the said Samuel H. Leathe in case the said judgment shall be affirmed in the said Appellate Court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

SAM'L H. LEATHE. [SEAL.]
FIDELITY AND DEPOSIT COMPANY [SEAL.]
OF MARYLAND.
By B. F. EDWARDS,
Member Local Board of Directors for Illinois.

[Corporation Seal Fidelity & Deposit Co. of Maryland.]

Attest:—
ROBT. L. McLARAN, *Agent.*

1259 STATE OF MISSOURI, *City of St. Louis, ss:*

On this twelfth day of August, 1902, before me appeared B. F. Edwards to me personally known, who being by me first duly sworn, did say that he is a member of the Local Board of Directors of the Fidelity & Deposit Company of Md., a corporation organized under the laws of the State of Maryland, and that the Seal affixed to the foregoing instrument is the corporate seal of said corporation; and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and the said B. F. Edwards acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and notarial seal the day and year first above written.

[NOTARIAL SEAL.] LENA E. BAER,
Notary Public, City of St. Louis, Mo.

My term expires May 25, 1905.

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 12th day of August, 1902, before me personally appeared S. H. Leathe, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the City of St. Louis State of Missouri on the day and year first above written.

[NOTARIAL SEAL.] LENA E. BAER,
Notary Public, City of St. Louis, Mo.

My term expires May 25th, 1905.

Approved by me this 12th day of August, 1902.
THOMAS MAY, JR.,
Circuit Clerk.

Filed Aug. 12, 1902.
THOMAS MAY, JR.,
Circuit Clerk, St. Clair County, Ill.

1260 STATE OF ILLINOIS, *St. Clair County, ss:*

I, Thomas May, Jr., Clerk of the Circuit Court of St. Clair County, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of —

1. Declaration filed December 31st, 1897.
2. Plea of Set-off filed January 8th, 1898.
3. Demurrer to Defendant's plea of set-off filed January 12th, 1898.
4. Motion for a rule on defendant to file Bill of Particulars filed February 28th, 1898.
5. Bill of Particulars filed March 12th, 1898.
6. Second Special Plea of Set-off filed February 10th, 1898.
7. Special Demurrer to Second Special Plea of Set-off filed March 7th, 1898.
8. Third Special Plea of Set-off filed February 10th, 1898.
9. Special Demurrer to Third Plea of Set-off filed March 7th, 1898.
10. Fourth Plea of Set-off filed April 4th, 1898.
11. Demurrer to fourth Plea of Set-off filed April 18th, 1898.
12. Replication to plea of set-off of Common Counts filed March 7th, 1898.
13. Replication to the Special Pleas of Set-off filed June 14th, 1898.
14. Additional Replication to the Third and Fourth Pleas of set-off filed September 12th, 1898.
15. Rejoinder to the Additional Replication to third and fourth Pleas of set-off filed June 14th, 1899.
16. The orders of Court January Term, 1898, April Term, 1898, September Term, 1898, January Term, 1899, April Term, 1899, September Term 1899, January Term 1900, Final Order January Term 1900, April Term 1900? September Term 1900, January Term 1901, April Term 1901, September Term 1901, January
1261 Term 1902, April Term 1902, respectively.
17. Bill of Exceptions.
18. Appeal Bond. As the same appears on file and of record in my office and the same being a Complete Record in a certain cause lately pending in said Court, on the Law side thereof, wherein Samuel H. Leathe is Plaintiff, and Edward L. Thomas is Defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Belleville, this 21st day of August, A. D. 1902.

THOMAS MAY, JR., *Clerk*,
By PHIL H. SOPP, *Deputy*.

STATE OF ILLINOIS:

In the Appellate Court, Fourth District, August Term, A. D. 1902.

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

Appeal *for* Circuit Court of St. Clair County.

Assignment of Errors.

Now comes the said Appellant, Samuel H. Leathe by G. A. Koerner, his attorney, and says that in the above record and proceedings there is manifest error in this:—

1. The Court erred in overruling the demurrer to pleas of set-off.
2. The Court erred in entertaining and adjudicating upon said pleas. It had no jurisdiction of the subject matter of said pleas.
3. The Court erred in overruling exceptions of Appellant to the report of Referee.
4. The Court erred in rendering any judgment against plaintiff.

1262 5. The Court erred in rendering judgment for the amount of $71,226.77 because said amount even if the pleas could be entertained and had been proved, is grossly excessive, in that no credits are given to appellant for different amounts, aggregating in excess of $60000 which appellee had theretofore been paid, and for which appellant is entitled to credit.

6. The Court erred in not rendering judgment for plaintiff for the amount with interest of the judgments upon which this suit is founded.

And for said Errors & other manifest errors and said record appearing appellant prays that said judgment of the Circuit Court be reversed, etc.

G. A. KOERNER,
Attorney for Appellant.

1263 *Transcript of Record.*

STATE OF ILLINOIS:

3623, A. 79.

Appellate Court, Fourth District, August Term, A. D. 1902.

At an Appellate Court for said Fourth District, State of Illinois, begun and held at Mt. Vernon, in said State, on the 26th day of August, 1902, the same being the Fourth Tuesday in said month of August, 1902, said term of said Court being held according to law.

Present: Hon. Hiram Bigelow, Presiding Justice. Hon. James

A. Creighton, Justice. Hon. N. E. Worthington, Justice. Frank W. Havill, Clerk. Thomas Manion, Sheriff.

Court opened by proclamation.

Attest: Filed Apr. 12, 1904. C. Mamer, Clerk of Supreme Court.
Filed Apr. 12, 1904. C. Mamer, Clerk of Supreme Court.
A. C. MILLSPAUGH, *Clerk*.

1264 Be it Remembered, That towit: on the 26th day of August A. D. 1902, there was filed in the office of the Clerk of said Appellate Court a certain Transcript of the Record and Proceedings had in the Circuit Court of St. Clair County, State of Illinois, wherein Samuel H. Leathe, plaintiff, and Edward L. Thomas, defendant, from the finding and judgment of said Circuit Court, in said cause, the said Samuel H. Leathe appealed to the Appellate Court, Fourth District, Illinois, and brings here and files said transcript, which is placed upon the Docket of said Appellate Court as follows towit:

August Term, A. D. 1902.

No. 56.

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

Appeal from Circuit Court, St. Clair County.

And which said Transcript is herewith transmitted to the Supreme Court and marked "Exhibit A."

1265 And afterwards, on the 24th day of February A. D. 1903, the following order was made and entered of record in said cause:

Feb. Term, 1903.

No. 5.

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

Appeal from Circuit Court, St. Clair County.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the Court for this Term, and this cause coming now on to be heard, the Appellant having entered motion to reverse the judgment and remand said cause, and for costs and the Appellee having entered motion to affirm the judgment herein and for costs

and for procedendo, and said motions being taken under advisement for final hearing, and the Clerk reporting to the Court that said cause is now ready to be taken on the call of the docket.

It is ordered by the Court, That this cause be now submitted upon the Record, Abstracts, Briefs and Arguments filed herein under the rules or order of the Court.

And after hearing oral argument by G. A. Koerner, for Appellant, and by E. L. Thomas for Appellee, it is further ordered by the Court that this cause be now taken under advisement for final determination.

1266 STATE OF ILLINOIS, *Appellate Court, Fourth District, ss:*

At an Appellate Court, Begun and held at Mt. Vernon, on the Fourth Tuesday in the month of February, in the year of our Lord one thousand nine hundred and three the same being the 24th day of February, in the year of our Lord one thousand nine hundred and three.

Present: Hon. Hiram Bigelow, Presiding Justice. Hon. James A. Creighton, Justice. Hon. N. E. Worthington, Justice. A. C. Millspaugh, Clerk.

And afterwards in vacation, towit: On the 15th day of June in the year of our Lord one thousand nine hundred and three, an order was made by said Court in words and figures following, towit:

February Term, A. D. 1903.

No. 5.

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

Appeal from Circuit Court, St. Clair County.

On this day come again the said parties, and the Court, having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment *decree* aforesaid is there anything erroneous, vicious or defective, and that that record is no error. Therefore, it is considered
1267 by the Court, that the motion heretofore made to Reverse the judgment and remand said cause for a new trial, be and the same are denied, and the motion heretofore made to Affirm the judgment herein is allowed; and it is therefore ordered by the Court that the judgment aforesaid be Affirmed in all things, and stand in full force and effect, notwithstanding the said matter and things therein assigned for error, and that motion for procedendo be allowed.

And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by him in this behalf expended, and that he have execution therefor.

1268 At an Appellate Court of the State of Illinois, Begun and held at Mt. Vernon on Tuesday, the 26th day of August, in the year of our Lord one thousand nine hundred two within and for the Fourth District of said State.

Present: Hon. Hiram Bigelow, Presiding Justice. Hon. James A. Creighton, Justice. Hon. N. E. Worthington, Justice. Frank W. Havill, Clerk.

February Term, 1903.

No. 5.

SAMUEL H. LEATHE, Appellant,
vs.
EDWARD L. THOMAS, Appellee.

Appeal from Circuit Court, St. Clair County.

Afterwards, in vacation, after said August Term, A. D. 1902, to-wit: On April 4th A. D. 1904, comes the appellant herein, by G. A. Koerner, his attorney, and excepts to the order of affirmance heretofore entered herein, and orders the Clerk of this Court to prepare a transcript of the Records of this Court to be filed in the Supreme Court on Writ of Error.

1269 I, A. C. Millspaugh, Clerk of the Appellate Court, within and for the Fourth District of the State of Illinois, do hereby certify that the foregoing is a true, perfect and complete transcript of the record of proceedings in said cause of said Appellate Court, as truly taken and copies by me from the files and the records now on file and of record in my office.

In testimony whereof, I have set my hand and affixed the seal of said Appellate Court at Mt. Vernon, this 6th day of April A. D., 1904.

[SEAL.] A. C. MILLSPAUGH,
Clerk of the Appellate Court.

STATE OF ILLINOIS:

In the Supreme Court, to June Term, 1904.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Error to Appellate Court, Fourth District of Illinois.

And now comes Samuel H. Leathe, the Plaintiff in error herein, in this—,
and says that there is in the record and proceedings manifest error—

1. The Court erred in not reversing the judgment of the Circuit Court of St. Clair County, Illinois.

2. The Court erred in affirming the judgment of the said Circuit Court of St. Clair County.

And the said Plaintiff in error, therefore prays that the said judgment of the Circuit Court of St. Clair County, and of the Appellate Court of the 4th District may be reversed.

GUSTAVE A. KOERNER,
Attorney for Plaintiff in Error.

1270 In the Supreme Court of Illinois, to June Term, A. D. 1904.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court, Fourth District.

The Clerk will please issue *scire facias* to hear errors directed to the Sheriff of St. Clair County to execute, returnable June Term A. D. 1904 and oblige,

G. A. KOERNER,
Attorney for Appellant.

1271 And afterward, to-wit: on the day last aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day comes the plaintiff in error, by counsel and moves the Court that the writ of error herein be made a Supersedeas.

And afterward, to-wit: on the 13th day of April A. D. 1904 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entere- of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day the Court having duly considered the motion of plaintiff in error that the writ of error herein be made

a supersedeas, and being fully advised in the premises. It is considered, by the Court, that the writ of error herein be made a supersedeas on filing bond in the penal sum of eighty five thousan ddollars, conditioned according to law, and with the Fidelity and Deposit Company of Meryland, as surety.

And afterward, to-wit: on the 14th day of April A. D. 1904 the same being one of the days of the term of Court last aforesaid, the plaintiff in error filed his bond in this Court in the penal sum of eighty five thousand dollars with the Fidelity and Deposit Company of Meryland as surety. Which bond with endorsements thereon is in words and figures following, to-wit:

1272 Know all men by these presents, That Samuel H. Leathe, as principal and Fidelity and Deposit Company of Maryland as security, are held and firmly bound unto Edward S. Thomas in the penal sum of Eighty Five Thousand Dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the same Samuel H. Leathe and said Fidelity and Deposit Company of Maryland bind themselves, their heirs, executors and administrators, and successors, jointly, severally and firmly by these presents.

Witness our hands and seals this 13th day of April A. D. 1904.

The condition of the above obligation is such, That, whereas the above named Edward S. Thomas did on the 30th day of June A. D. 1902, and of the April Term of the Circuit Court, held in and for the County of St. Clair in the State of Illinois A. D. 1902, recover a judgment against the above bounden Samuel H. Leathe, for the sum of seventy one thousand, two hundred and twenty six 37/100 Dollars ($71226.37) together with costs of suit, which said judgment has been affirmed by the Appellate Court of the Fourth District of Illinois to reverse which said judgment of the Circuit Court of St. Clair County and of the Appellate Court of the Fourth District, the said Samuel H. Leathe has sued out a Writ of Error from the Supreme Court of said State, which Writ of Error is made a Supersedeas. Now, if the said Samuel H. Leathe shall duly prosecute said Writ of Error and pay, or cause to be paid, the amount of said judgment and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against him in case said judgment shall be affirmed, and abide the order and judgment of said Supreme Court in this behalf then this obligation is to be void, otherwise to remain in full force and effect.

SAMUEL H. LEATHE. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By ROBT L. McLARAN, [SEAL.]
[SEAL.] *Agent and Attorney in Fact.*

Countersigned
C. J. McLARAN.

1273 STATE OF MISSOURI, *City of St. Louis, ss:*

On this thirteenth day of April 1904, before me appeared Rob't L. McLaran to me personally known who being by me first duly sworn did say that he is Agent and Attorney in Fact of the Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and the said Rob't L. McLaran acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and notarial seal the day and year first above written.

LENA E. BAER,

[SEAL.] *Notary Public, City of St. Louis, Mo.*

My term expires May 25, 1905.

I further certify that under the laws of the State of Missouri, I have the authority to administer oaths.

LENA E. BAER.

No. 3623. Supreme Court of Illinois. Samuel H. Leathe *vs.* Edward S. Thomas. Supersedeas Bond. Filed April 14 A. D. 1904. C. Manner Clerk.

1274 *Certificate of Compliance Surety Companies.*

(Form, May 1, 1901.)

STATE OF ILLINOIS:

Insurance Department.

SPRINGFIELD, ILL., *April* 11, 1904.

Whereas, the Fidelity and Deposit Company of the City of Baltimore, in the State of Maryland has furnished the Insurance Superintendent due proof that such Company is possessed of the qualifications specified in the Act of the General Assembly of the State of Illinois, entitled, "An Act to enable corporations created for that purpose to transact a surety business, in this State, and to become the surety of bonds required by law," approved June 8, 1897, now

Therefore, I, Wm. R. Vredenburgh, Insurance Superintendent of the State of Illinois, by virtue of authority in me vested my law, do hereby certify that said Company has qualified and is authorized to do business under the said Act for the ensuing year, ending January 31, 1905.

In testimony whereof, I hereunto subscribe my name and affix

the seal of my office at Springfield, the day and year first above written.

[SEAL.] WM. R. VREDENBURGH,
Insurance Superintendent.

1275 At a Supreme Court, Begun and held at Springfield on Tuesday, the Seventh day of June in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present:—James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice, Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit: on the 16th. day of June A. D. 1904, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Third District.

And now on this day the Court being duly informed and being fully advised that there is no service in this cause orders the same continued for service.

And afterward, to-wit: on the day last aforesaid there issued out of this Court *scire-facias* directed to the Sheriff of Cook County, which, with the Sheriff's return thereon, is in the words and figures following, to-wit:

1276 STATE OF ILLINOIS, *Supreme Court, ss:*

The People of the State of Illinois to the Sheriff of St. Clair County Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of St. Clair County before the Judge thereof, between Samuel H. Leathe and Edward L. Thomas it is said manifest Error hath intervened, to the injury of the said Samuel H. Leathe as we are informed by his complaint the records and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State

of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same in due form and manner, according to law;

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Edward L. Thomas that he be and appear before the Justices of our said Supreme Court, at the next term of said Court to be holden at Springfield, in said state, on the first Tuesday in October A. D. 1904, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then and there the names of those by whom you shall give the said Edward L. Thomas notice, together with this writ.

Witness James B. Ricks Chief Justice of our said Court, and the seal thereof, at Springfield this Sixteenth day of June in the year of our Lord one thousand nine hundred and four.

[SEAL.] CHRISTOPHER MAMER,
Clerk of the Supreme Court.

[Endorsed:] No. 3623. Supreme Court of Illinois. Samuel H. Leathe *vs.* Edward L. Thomas. *Scire Facias.* Filed June 18th, 1904. —— ——, Clerk. Return on other side. State of Illinois, County of St. Clair, *ss:* I received this writ at 11 o'clock A. M. this 17th day of June A. D. 1904. G. W. Thompson, Sheriff, by Q. B. Heidinger, Deputy Sheriff. P. 420.

STATE OF ILLINOIS, *County of St. Clair, ss:*

I have duly served this writ by reading the same to Edward L. Thomas the within named defendant this 17th. day of June A. D. 1904 as I am therein commanded.

G. W. THOMPSON, *Sheriff,*
By Q. B. HEIDINGER,
Deputy Sheriff.

Service	65
Mileage	10
Ret	10
	.85

1277 And afterward, to-wit: on the 18th. day of June A. D. 1904, the same being one of the days of the term of Court last aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to the Appellate Court of Fourth District.

And now on this day comes defendant in error, by counsel, and moves the Court to set aside the order to continue, and for leave to submit this cause at this term.

And afterward, to-wit: on the 20th. day of June A. D. 1904, the same being one of the days of the term of Court last aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to the Appellate Court of Fourth District.

And now on this day the Court having duly considered the motion of defendant in error to set aside the order continuing this cause, heretofore entered, and the Court being fully advised in the premises grants said motion and orders this cause placed at the foot of the docket for to-morrow.

And afterward, to-wit: on the 22nd. day of June A. D. 1904, the same being one of the days of the term of Court last aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourt- District.

And now on this day it is ordered and considered by the Court that the plaintiff in error have fifteen days' time from June 21st, 1904, to file reply briefs.

1278

3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause, and for costs, and the said defendant in error having entered motion to affirm said judgment, and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

1279 At a Supreme Court, Begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present: James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be It Remembered, to-wit, on the twenty-fourth day of October, A. D. 1904, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court, had and entered of record, to-wit:

No. 3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Fourth District.

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein

assigned for Error, and now being sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid, there is Manifest Error: Therefore it is considered by the Court that for that Error, and others in the record and proceedings aforesaid, the judgment of the Circuit and of the Appellate Court, in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and this cause be remanded to the Circuit Court of St. Clair County for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the Court, that the said plaintiff in Error recover of and from the said defendant in error costs by him in this behalf expended, and that he have execution therefor.

1280 At a Supreme Court, Begun and held at Springfield on Tuesday, the Fourth day of October, in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois,

Present: James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be It Remembered, That afterwards, to-wit, on the twenty-fourth day of October, 1904, the opinion of the Court was filed in the words and figures following, to-wit:

No. 3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Fourth District.

Appeal from ——.

1281 Docket 3623, Agenda 79, June, 1904.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

The plaintiff in error brought suit in the circuit court of St. Clair county against the defendant in error upon two judgments, aggregating the sum of $3202.38, rendered in his favor by the circuit court of the city of St. Louis, State of Missouri, against the defendant in error. The defendant in error did not contest the validity of the judgments, but filed a set-off and sought judgment against plaintiff in error. The case, by agreement, was referred to a referee

to take proofs and report his conclusions as to the facts and the law. The referee filed a report, upon which the court, after overruling exceptions thereto, rendered judgment in favor of the defendant in error for $71,326.37, which judgment has been affirmed by the Appellate Court for the Fourth District, and the plaintiff in error has sued out a writ of error from this court.

The facts out of which the alleged set-off of defendant in error arose are, in brief, as follows: The defendant in error, in connection with one William A. Adams, was engaged in constructing a railroad between Belleville and East St. Louis, the corporate name of which was the Belleville and St. Louis Railway Company. Adams died in 1891, at which time it was claimed he had invested in the enterprise $23,000 and the defendant in error $50,000. The defendant in error, upon the death of Adams, applied to the plaintiff in error for financial assistance to complete the road. After some preliminary negotiations, on January 24, 1893, an agreement in writing was entered into between the plaintiff in error, the defendant in error, Bart S. Adams, a son of William A. Adams and the representative of the Adams estate, and Lucien M. Chipley, who had become interested in the construction of the road, which agreement was as follows:

1282 "St. Louis, *January* 24, 1893.

"It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley $78,300 of said stock, said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 five per cent. bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2000, with interest, and Third National Bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000 and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

"Dated January 24, 1893.

EDWARD L. THOMAS
BART S. ADAMS
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

"In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the

statements made in my letter of January 12, 1893, and as security, to hold until all matters are fully arranged and paid for
1283 which I am responsible, as per said letter and statement rendered.

EDWARD L. THOMAS."

Immediately after the execution of said agreement plaintiff in error commenced the construction of said road. In March, 1893, it was determined by the parties in interest to abandon the charter under which the defendant in error had commenced the construction of said road, and thereafter to operate under a charter authorizing the construction and operation of a railroad between Belleville and East St. Louis, known as the Belleville City Railway Company, granted prior to the adoption of the constitution of 1870, which was controlled by Charles W. Thomas, a brother of the defendant in error. On the 25th day of March, 1893, a meeting was held by the parties who owned and controlled the stock in the Belleville and St. Louis Railway Company and the Belleville City Railway Company, and the assets of the Belleville and St. Louis Railway Company were transferred to plaintiff in error by deed, which recited a consideration of one dollar and "other valuable considerations to it from him moving," and the plaintiff in error immediately transferred to the Belleville City Railway Company said assets, and the capital stock of said Belleville City Railway Company was issued, share for share, to the parties who had before that time held the stock of the Belleville and St. Louis Railway Company. The railroad was completed, and on November 8, 1895, the Belleville City Railway Company and the Crown Coal and Tow Company, the stock of which was owned and controlled by the parties who owned and controlled the stock of the Belleville City Railway Company, were sold and transferred to Elbert H. Gary, who represented certain undisclosed principals, for the sum of $500,000, which amount
1284 was divided among the shareholders of said railway company and coal company in proportion to their holdings of stock in said corporations.

In the year 1893 the defendant in error brought suit against the Belleville and St. Louis Railway Company to recover for moneys advanced by him for the use of said company prior to the death of Adams. The plaintiff in error was notified of the commencement of said suit and that he could defend in the name of the company if he saw fit. He employed counsel and in the name of the company defended against the claim of the defendant in error. He also filed a bill in chancery in the name of himself, the Belleville and St. Louis Railway Company and the Belleville City Railway Company to enjoin the prosecution of said suit. The cases were tried together before the court, without a jury. The bill was dismissed for want of equity, and on December 21, 1893, judgment for $53,022.23 was rendered against the company in favor of defendant in error. Thereafter suit was brought in the circuit court of St. Clair county by the defendant in error, in the name of the Belleville City Railway Company for the use of Edward L. Thomas, against plaintiff in error, to recover the amount of said indebtedness,

on the ground that at the time of the transfer of the assets of the Belleville and St. Louis Railway Company to plaintiff in error he agreed to pay the debts of said company, including its debt to defendant in error. The case was removed to the United States Circuit Court for the Southern District of Illinois, where, upon a trial before the court without a jury, a judgment was rendered in favor of the plaintiff in error, which judgment was affirmed by the United States Circuit Court of Appeals. The claim sought to be offset in this suit and upon which judgment was rendered in favor of the defendant in error is the indebtedness of the Belleville and St. Louis Railway Company to defendant in error, and which it is claimed was, in part, the "other valuable considerations to it from him moving," specified in the deed from the Belleville and St. Louis Railway Com-
1285 pany to the plaintiff in error, and which claim, it is said, the plaintiff in error assumed and agreed to pay.

The basis of computation of the referee and the amount for which he recommended judgment in favor of the defendant in error were as follows, as appears from his report:

Defendant's judgment, December 21, 1893..	$53,022.23	
Interest to January 11, 1902, 8 years and 20 days, 5 per cent.....	21,356.17	
		$74,378.40
Deduct Plaintiff's Judgments:		
Judgment March 5, 1896.....	2,278.63	
Interest on $337.27, 8 per cent., 5 years, 10 month, 6 days	157.83	
I. 41.36	681.40	
Judgment January 5, 1897.....	923.75	
Interest, 6 per cent., 5 years and 6 days...	278.04	
		4,319.65
Balance.....		$70,058.75

To this amount was added interest on the amount found due February 14, 1902, to June 30, 1902, making the amount for which judgment was rendered $71,326.37.

Mr. Justice HAND delivered the opinion of the court:

It is first contended that the judgment exceeds the amount of the *ad damnum* of the pleas upon which judgment was rendered in favor of the defendant in error. The attention of the trial court was not challenged, by exception or otherwise, to the fact that the amount found by the referee to be due the defendant in error, and for which amount he recommended that defendant in error have judgment, exceeded the amount of the *ad damnum* of the pleas. Had
1286 the court's attention been called to that fact the pleas could readily have been amended and the error avoided. In Butler *v.* Cornell, 148 Ill., 276, it is said that an objection to the report of a referee, not made in the trial court by exception, which might have

been obviated by amendment, will not be considered on appeal or writ of error. In Metropolitan Accident Assn. *v.* Froiland, 161 Ill. 30, Prairie State Loan and Building Assn. *v.* Gorrie, 167 *id.* 414, and Wheatley, Buck & Co. *v.* Chicago Trust and Savings Bank, *id.* 480, it was held that an objection that the judgment exceeds the amount of the *ad damnum* of the declaration cannot be raised for the first time on appeal. In Wheatley, Buck & Co. *v.* Chicago Trust and Savings Bank, *supra*, the point was made that the judgment exceeded the *ad damnum* laid in the declaration. The court, on page 484, said: "This, indeed, was error. But the error can not now be taken advantage of. The objection must be considered as waived by reason of its not having been made in the trial court. Had that court's attention been called to the matter the objection could readily have been obviated. (Metropolitan Accident Assn. *v.* Froiland, 161 Ill. 30; Utter *v.* Jaffray, 114 *id.* 470.) Counsel, on the contrary, made no mention of the error in either the motion for a new trial or the motion in arrest of judgment." By reason of the failure of the plaintiff in error to raise the question in the trial court, the objection was waived and cannot now be taken advantage of in this court.

It is next contended that pleas of set-off presented no defense to the action and that the court had no jurisdiction to entertain them, and it is urged that the court, by rendering judgment thereon in favor of the defendant in error, violated section 1 of article 4 of the constitution of the United States, which provides, "full faith and credit shall be given, in each State, to the public acts, records and judicial proceedings of every other State," as it is said a set-off against
1287 a judgment is not permmitted by the laws of the State of Missouri. The validity of the judgments rendered in favor of plaintiff in error by the Missouri court, and upon which suit was brought, was not attacked, but full faith and credit were given thereto. Under the statute of this State, (Hurd's Stat. 1903, chap. 110, sec. 19), demands upon simple contracts may be set off against demands upon judgments, which statute includes a judgment rendered by a court of the State of Missouri as well as a judgment rendered by a court in this State. It has uniformly been held that each of the States of the Union may pass a law limiting the time within which an action may be brought in said State upon a judgment rendered in a court of another State, without thereby depriving the judgment of the full faith and credit which it is entitled to under the constitution of the United States. This holding is based upon the ground that a statute of limitations affects only the remedy, and that a limitation law is a law of the forum, and must control. (Metcalf *v.* City of Watertown, 153 U. S. 671.) It is also held that a plea of set-off is a plea to the remedy (Mineral Point Railroad Co. *v.* Barron, 83 Ill. 365; Davis *v.* Morton, 5 Bush. 160; 96 Am. Dec. 345; Second Nat. Bank of Cincinnati *v.* Hemingray 31 Ohio St. 168). That being true, the statute of the State wherein the action is brought controls as to what character of set-off, if any, may be pleaded. When, therefore, suit is brought upon a judgment of another State in the courts of this State, as the statute of this State permits demands upon simple contracts to be offset against judgments,

the statute of this State will control. Furthermore, the statute of the State of Missouri upon the subject of set-off was not in evidence, and the courts of this State without proof will not take judicial notice thereof. In Chicago and Alton Railroad Co. *v.* Wiggins Ferry Co. 119 U. S. 615, it was said: "Whenever it becomes necessary, under this requirement of the constitution, (art. 4, sec. 1), for a
1288 court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, the law of that State must be proved as a fact. No court of a State is charged with knowledge of the laws of another State, but such laws are in that court matters of fact, which, like other facts, must be proved before they can be acted upon. This court, and the other courts of the United States when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States; but in this court, when acting under its appellate jurisdiction, whatever was matter of fact in the court whose judgment or decree is under review is matter of fact here. This was expressly decided in Hanley *v.* Donoghue, 116 U. S. 1, in respect to the faith and credit to be given by the courts of one State to the judgments of another State, and it is equally applicable to the faith and credit due in one State to the public acts of another."

It is next contended that the liability of the plaintiff in error to pay to the defendant in error the debt due him by the Belleville and St. Louis Railway Company was determined in favor of the plaintiff in error and against the defendant in error in the suit brought by the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, against the plaintiff in error, in the circuit court of St. Clair county and removed to the United States Circuit Court, where judgment was rendered in favor of plaintiff in error, which judgment was affirmed by the United States Circuit Court of Appeals, and that the question of plaintiff in error's liability to defendant in error upon the claim of defendant in error against said Belleville and St. Louis Railway Company is *res judicata*.

The declaration in the case of the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, against the
1289 plaintiff in error, tried in the United States Circuit Court, originally contained three counts. The first count was dismissed and the case tried upon the second and third counts of the declaration, which were, in substance, as follows:

"Second count. And whereas, also, the defendant, on the 25th day of March, 1893, at the county of St. Clair aforesaid, being then and there the owner of a large tract of valuable real estate, conveyed the same, by deed of that date, duly executed and acknowledged and delivered, to Samuel H. Leathe, the defendant, for a consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff; and the plaintiff avers that said defendant then and there accepted said deed; and plaintiff further avers that the other valuable consideration moving from said defendant to said plaintiff was the promise and agreement of said defendant then and there made in consideration of said deed and as payment

of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties; and plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to-wit, in the sum of $60,000, of which the defendant then and there had full notice; and plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised and agreed to be paid by said defendant as part of the consideration of said deed; and the plaintiff further avers that at the September term, 1893, of the circuit court in and for said county of St. Clair and State of Illinois, a court having full jurisdiction over such matters, the said Ed-
1290 ward L. Thomas commenced an action against the said Belleville and St. Louis Railway Company to recover said amount due him; and plaintiff further avers that it caused the said defendant to be notified of the pendency of said suit, and authorized the said defendant to use its said name in defending said suit; and plaintiff further avers that said defendant, in pursuance of said notice, employed counsel and filed pleas and entered into and upon the defense of said cause; and plaintiff further avers that the issue in said cause was whether the amount claimed by said Thomas was then due and payable to him, the said Edward L. Thomas; and plaintiff further avers that after trial of the said cause, upon evidence introduced by said defendant as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in full force and effect, and which the plaintiff is ready to show by the record thereof, here now shown in court; and plaintiff avers that such judgment had not been paid, but remains still due and unpaid and in full force and effect; and plaintiff avers that afterwards, to-wit, on the day and year aforesaid, said defendant, in consideration thereof, promised the plaintiff to pay it the said amount of said judgment, according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested.

"Third count. And whereas, also, the plaintiff, on the 25th day of March, 1893, at the county of St. Clair aforesaid, being then and there the owner of a large tract of valuable land, conveyed the same by deed of that date, duly executed and acknowledged and delivered, to Samuel H. Leathe, the defendant, for and in consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff; and the plaintiff avers that the other valuable considerations moving from said defendant to said
1291 plaintiff were the promise and agreement of said defendant then and there made in consideration of said deed and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties; and the plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of

money, to-wit, in the sum of $60,000, of which the defendant then and there had full notice; and plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised to be paid by said defendant as part of the consideration of said deed; and plaintiff further avers that at the September term, 1893 of the circuit court in and for said county of St. Clair and State of Illinois, and the court having full jurisdiction over such matters, the said Edward L. Thomas commenced action against the Belleville and St. Louis Railway Company to recover said amount due him; and plaintiff further avers that it caused the said defendant to be notified of the pendency of the said suit, and authorized the said defendant to use its said name in defending said suit; and plaintiff further avers that the defendant in pursuance of said notice, employed counsel and filed pleas and entered into and upon the defense of said cause; and plaintiff further avers that the issue of said cause was as to whether the amount claimed by said Thomas was then due and payable to him, the said Thomas; and plaintiff further avers that after the trial of said cause, upon evidence introduced by the said defendant as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in full force and effect and which plaintiff is ready to show by the record thereof, here now shown in court; and plaintiff
1292 avers that said judgment has not been paid, but remains still due and unpaid and in full force and effect; and plaintiff further avers that before the trial of the said cause, and while the same was standing for trial, the said defendant, in his name and in the name of the Belleville and St. Louis Railway Company and the Belleville City Railway Company, filed in said court a bill for injunction against the said Edward L. Thomas, to enjoin him from proceeding with said cause and from recovering a judgment against the said Belleville and St. Louis Railway Company on said indebtedness; that among other things, one of the issues made by said bill, and answer thereto, was as to whether the amount claimed by said Thomas from said Belleville and St. Louis Railway Company was then due and payable, and whether said defendant had assumed, by reason of said deed and as a consideration therefor, the payments of the debts of the said Belleville and St. Louis Railway Company, of which the amount claimed by said Thomas was one; that upon said issue a full hearing was had, and it was then and there fully adjudicated and said injunction was denied and said bill dismissed, and thereupon said judgment was rendered in said suit brought by the said Thomas against the Belleville and St. Louis Railway for said sum of $53,022.23 and costs of suit; and plaintiff avers that it was then and there fully determined and adjudicated by said court that said sum was due and payable to the said Thomas, and that the said defendant had assumed the payment of said indebtedness of said Belleville and St. Louis Railway Company in consideration of the conveyance to him of said property by said deed, as aforesaid, and that the court determined and adjudicated the same upon the voluntary coming into said court by the said defendant and asking by said

bill an adjudication thereof, all of which the plaintiff here now shows to the court by the record and proceedings and judgment and
1293 decree of said court in said cause, here now presented to the court; and plaintiff avers that afterwards, to-wit, on the day and year aforesaid, at the county aforesaid, said defendant, in consideration thereof, promised the plaintiff to pay it the said amount of said judgment according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested, and although often requested, defendant has not paid said several sums of money, or any or either of them, or any part thereof, to plaintiff for the use aforesaid, but to do so has hitherto and still doth refuse, to the damage of the plaintiff, for the use aforesaid, of $60,000, wherefore it brings suit," etc.

The defendant pleaded the general issue and a jury was waived and the case was tried by the court. The plaintiff introduced the record in the action at law in the St. Clair county circuit court wherein Edward L. Thomas was plaintiff and the Belleville and St. Louis Railway Company was defendant, in which action the plaintiff recovered judgment against the defendant for $53,022.23, and proved that the plaintiff in error was given notice to defend, and that he did defend in the name of the railroad company; also the record in the chancery suit wherein the plaintiff in error, the Belleville and St. Louis Railway Company and the Belleville City Railway Company were complainants and the defendant in error was defendant, in which suit the evidence was preserved in the decree, and rested. The defendant introduced no evidence, but at the close of the plaintiff's evidence moved the court to exclude the evidence and render judgment for the defendant. The court took the case under advisement, and thereafter sustained said motion to exclude the evidence and rendered judgment for the defendant and against the plaintiff for costs, which judgment upon writ of error, was affirmed by the United States Circuit Court of Appeals.

In this case the defendant in error filed four pleas of set-off. The first consisted of the common counts for money had and
1294 received, interest and an account stated. The second was based on the agreement of January 24, 1893, set out in full in the statement preceding this opinion. The third is based on the consideration for the conveyance to plaintiff in error made March 25, 1893, by the Belleville and St. Louis Railway Company, of certain property, etc., named in its deed, for one dollar and "other valuable considerations," which other valuable considerations, it was averred, included the promise of plaintiff in error to pay the defendant in error the debt due him from said company, and it was alleged that at the September term, 1893, of the St. Clair county circuit court, defendant in error brought suit against said company for the amount so due him; that the company notified plaintiff in error to defend, and that he employed counsel and defended the suit, and that the defendant in error recovered judgment for $53,022.23, which judgment is still in full force and effect. It also sets up plaintiff in error's efforts to enjoin the prosecution of said suit, the issues presented, the full

hearing by the court and the dismissal of the bill. The fourth plea was as follows:

"Fourth plea. And for further plea in this behalf, defendant says that the said plaintiff was, before and at the time of the commencement of this suit and is still, indebted to him, the defendant, in a large sum, to-wit, the sum of $65,000, upon a contract theretofore entered into by said plaintiff and the Belleville and St. Louis Railway Company for the benefit of the defendant; and defendant avers that on, to-wit, the 25th day of March, 1893, said Belleville and St. Louis Railway Company executed and delivered to said plaintiff a deed as follows, that is to say:

" 'The grantor, the Belleville and St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the city of
1295 St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described lands, situated in the county of St. Clair and State of Illinois: All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof; also all the rights of way, easements, grading and superstructure thereon, acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the said Leathe, that it will, upon demand, convey, by good and proper deed of conveyance, to said Leathe and his assigns, any land, easements and right of way, privileges or immunities, it may hereafter acquire.

"Dated this 25th day of March, A. D. 1893.

[SEAL.] THE BELLEVILLE AND ST. LOUIS RAILWAY CO.,
By EDWARD L. THOMAS, *President.*

Attest:
HENRY M. NEEDLES, *Secretary.*

" 'We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS.
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*'

" 'STATE OF ILLINOIS, *St. Clair County, ss:*

1296 " 'Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are

subscribed to the foregoing instrument, and who, being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to said instrument for the uses and purposes therein set forth, as president of said company; that he is president of said company, and executed said deed as president by order of the stockholders of said company, whose names are subscribed thereto also; that said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of said stockholders.

"'In witness whereof I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

A. F. MILLER,
Notary Public.

"'Filed March 25, 1893, at 2:27 o'clock P. M.'

"And defendant avers that said deed was then and there accepted by said plaintiff; and defendant further avers that the property described in said deed was at the time of the executing and delivering of the same to plaintiff, as aforesaid, of great value, to-wit, of the value of $100,000; and defendant avers that said Belleville and St. Louis Railway Company was at the time of the making, executing and delivering of said deed and the acceptance thereof, indebted to divers persons in large sums of money, to-wit, in sums aggregating the sum of $90,000; and defendant avers that part of the indebtedness of said railway company was its indebtedness to this defendant, in the sum of, to-wit, $65,000; and defendant avers that at the time of the making, executing, delivering and accepting of said deed to and by said plaintiff, said plaintiff had notice of said indebtedness of said railway company and he had full knowledge of the
1297 amount thereof; and defendant avers that the consideration in said deed moving from said plaintiff to said railway company, was the agreement and promise of the said plaintiff, then and there entered into and made with the said railway company, that said plaintiff, as the consideration and payment for the property thereby to him conveyed, would pay and satisfy the said indebtedness of the said railway company to said divers parties, among whom was this defendant, and that said plaintiff, in consideration thereof, agreed and promised to pay to said defendant, within a reasonable time thereafter to elapse, the said indebtedness of said railway company to this defendant, amounting to said sum of, to-wit, $65,000, which time has long since elapsed and the plaintiff has not paid said sum nor any part thereof to the defendant, by means whereof the plaintiff has become liable to pay to said defendant said sum of money, to-wit, $65,000, which sum of money so due from the plaintiff to the defendant, aforesaid, exceeds the damages sustained by the plaintiff by reason of the non-payment by the defendant of the said several judgments in the said declaration mentioned, and out of which said sum of money the defendant is ready and willing, and hereby offers, to set off and allow to the plaintiff the full amount of the damages; and this the defendant is ready to verify, wherefore he prays judgment," etc.

Demurrers were overruled to said pleas, whereupon the plaintiff in error filed a general replication thereto, and a special replication to the third and fourth pleas, which was, in part, as follows: "The plaintiff says that the defendant heretofore impleaded him, the plaintiff, in an action in assumpsit begun in the name of the Belleville and St. Louis Railway Company, for the use of Edward L. Thomas, in the circuit court of St. Clair county, Illinois, to the April term, A. D. 1894, in a plea of trespass on the case on promises, to the damage of the plaintiff of $50,000, for not performing the very
1298 same promises in said third and fourth pleas of set-off mentioned, and such proceedings were thereupon had that at the same term of said court said cause was removed to the Circuit Court of the United States for the Southern District of Illinois, and afterwards, in said court last named, which had jurisdiction of the persons and the subject matter, such proceedings were had that by the consideration of said court the issues were found for the defendant in said cause, (the plaintiff herein,) and that the said plaintiff herein recovered his costs by him in defense of said cause expended." To the replication *nul tiel* record was pleaded.

We think it clear if the defendant in error had recovered a judgment in the United States Circuit Court against the plaintiff in error upon the case made there, and that judgment had been satisfied, it would be a bar to a recovery upon the cause of action set up in the pleas of set-off filed in this case, as it is evident from the declaration filed in the case of the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, against Samuel H. Leathe, and the pleas of set-off filed in this case, that the defendant in error in each case was attempting to recover judgment against the plaintiff in error for the same demand, viz., the debt of the Belleville and St. Louis Railway Company to the defendant in error, which it was averred the plaintiff in error had agreed to pay. The defendant in error failed in the case in the United States Circuit Court by reason of the fact that he did not prove that the plaintiff in error had agreed to pay said debt. In that suit the defendant in error relied upon the record in the action at law brought by him against the Belleville and St. Louis Railway Company and the record in the chancery suit brought by the plaintiff in error and said railway companies against him, to establish his debt and the plaintiff in error's promise to pay
it, but the court held the proof was not sufficient to entitle
1299 him to recover judgment against plaintiff in error. The United States Circuit Court found the issues for defendant and rendered judgment against plaintiff for costs which was a final judgment.

In Zimmerman *v.* Zimmerman, 15 Ill. 84, a judgment was entered by a justice of the peace showing that the parties appeared before the justice and went to trial, and after hearing the testimony he rendered judgment against the plaintiff for costs. This was held to be a judgment in bar and constituted a good defense to a subsequent suit brought upon the same cause of action. The defendant in error failed in the United States Circuit Court because his evidence was insufficient to establish his right to judgment. The defendant

in that case, in effect, by his motion demurred to the evidence. The court, in passing upon that motion, held the evidence insufficient to entitle the plaintiff to recover and gave judgment for the defendant. Where the plaintiff fails to make a case and the court gives a peremptory instruction in favor of defendant, and the court renders judgment upon a verdict of the jury returned under such direction, it can not be doubted the judgment is final and upon the merits and can be pleaded in bar of another action based upon the same facts. We see no difference between the legal effect of such judgment and th judgment rendered by the United States Circuit Court. The fact that the plaintiff in the case in the United States Circuit Court failed to prove, by sufficient or competent evidence, that the defendant promised to pay to him the debt of the Belleville and St. Louis Railway Company and judgment was rendered in favor of the defendant by reason of the failure to make such proof, did not leave that question an open one, subject to be re-tried in another suit. A plaintiff cannot try his case by piecemeal. In the case at bar the defendant in error submitted proof of the alleged parol promise of the plaintiff in error to pay the debt due him by the Belleville and St.
1300 Louis Railway Company, and that said debt was included within the provision "other valuable considerations to it from him moving," contained in the deed of March 25, 1893. Under the declaration on file in the case in the United States Circuit Court the question of the promise of the plaintiff in error to pay said debt and that the same fell within the said provision contained in said deed was put in issue by the plea filed in that case, and the same evidence would have been material and admissible there. The defendant, however, saw fit to rely upon the record evidence only, and in this case he is bound by the record made in that case.

The doctrine of *res judicata* embraces not only what has been actually determined in the former suit, but also extends to any other matters properly involved and which might have been raised and decided in that suit (Bennett *v.* Wilmington Star Mining Co. 119 Ill. 9). In Umlauf *v.* Umlauf, 117 Ill. 580, on page 584, the court said: "No principle is better settled than that where a question proper for judicial determination is directly put in issue and finally determined in a legal proceeding by a court having competent authority and jurisdiction to hear and determine the same, such decision and determination of the question will be deemed final and conclusive upon the parties and their privies in all future litigation between them in which the same question arises, so long as the judgment remains unreversed or is not otherwise set aside." In Bailey *v.* Bailey, 115, Ill. 551, at page 557 the court said: "As said in Rogers *v.* Higgins, 57 Ill. 244, the controversy cannot be re-opened to hear additional reasons which before existed and were within the knowledge of the party, in support of the same cause of action. The principle of *res judicata* embraces not only what actually was determined in the former case, but also extends to any other matter properly involved and which might have been raised and determined
1301 in it." And in Harmon *v.* Auditor of Public Accounts, 123 Ill. 122, at page 133, the court quoted with approval the lan-

guage of the Supreme Court of the United States in Town of Beloit *v.* Morgan, 7 Wall. 619, where it was said: "The principle of *res judicata* reaches further. It extends not only to the questions of fact and of law which were decided in the former suit, but also to the grounds of recovery or defense which might have been, but were not, presented."

From an examination of this record we have been forced to the conclusion that the circuit and Appellate Courts erred in holding that the judgment of the Circuit Court of the United States was not a bar to defendant in error's right of recovery in this case under the pleas of set-off filed by him, as we think it apparent the question whether or not the plaintiff in error agreed to pay to the defendant in error the debt due him by the Belleville and St. Louis Railway Company was in issue in that case and was decided therein adversely to the defendant in error, and that that judgment was a final judgment upon the merits and binding upon the defendant in error, and is *res judicata* of the question presented by said pleas of set-off.

The judgment of the circuit and Appellate Courts will therefore be reversed and the cause remanded.

Reversed and remanded.

1302 STATE OF ILLINOIS, *Supreme Court, ss:*

I, Christopher Mamer, Clerk of the Supreme Court of the State of Illinois, and keeper of the Records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Supreme Court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said Supreme Court at Springfield, this 24th day of October A. D. 1904.

[SEAL.] CHRISTOPHER MAMER,
Clerk of the Supreme Court.

1303 In the Supreme Court.

Be it remembered, to-wit: On the seventeenth day of November, A. D. 1904, it being a day in vacation, there was filed in the Office of the Clerk by the Defendant in error, his petition for re-hearing in this cause.

1304 At a Supreme Court, Begun and held at Springfield on Tuesday, the Sixth day of December in the year of our Lord One Thousand Nine Hundred and —, within and for the State of Illinois.

Present:—James B. Ricks, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day comes Defendant in error, by counsel and moves the court for leave to file a certified copy of brief filed by plaintiff in error in the Appellate Court.

And afterward, to-wit: on the eighth day of December, A. D. 1904, the same being a day of term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day the Court having duly considered the petition for re-hearing filed herein and being fully advised in the premises, allows the prayer of said petition and grants a re-hearing herein.

And afterward, to-wit: on the Thirteenth day of December, A. D. 1904, the same being a day of term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

1305 No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day comes Plaintiff in error and suggests the death of Gustav*iss* Koerner, his Attorney of record and moves to substitute B. H. Canby and V. K. Koerner.

And plaintiff in error also moves the Court by counsel for leave to file a certified copy of his additional abstract and brief filed in the appellate Court.

And afterward, to-wit: on the Fourteenth day of December, A. D. 1904 the same being a day of term of Court aforesaid the following proceedings were by said Court had and entered of record.

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day the Court having duly considered the motion of Defendant in error for leave to file a certified copy of brief filed by plaintiff in error in the Appellate Court as well as the motion of Plaintiff in error for leave to file certified copy of his additional abstract and brief filed in the Appellate Court, and being now fully advised in the premises over-rules and denies each and every of such motions.

And thereupon, again comes plaintiff in error by counsel, it being the day of the term of Court aforesaid and moves the Court to set a day for oral argument.

1306 And afterwards to-wit: on the Fifteenth day of December, A. D. 1904, the same being a day of the term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day the Court having duly considered the motion of Plaintiff in error to set this cause for oral argument and being fully advised in the premises over-rules and denies said motion.

And afterwards to-wit: on the Twenty First day of December, A. D. 1904, the same being a day of the term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

1307 No. 3623.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that Plaintiff in error. hath filed

herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said Defendant in error having entered motion to affirm said judgment, and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

1308 At a Supreme Court, begun and held at Springfield on Tuesday, the Sixth day of June, in the year of our Lord one Thousand Nine hundred and Five, within and for the State of Illinois.

Present: James H. Cartwright, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; James B. Ricks, Justice; Guy C. Scott, Justice; William H. Stead, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to-wit, on the Twenty-third day of June, A. D. 1905, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court, had and entered of record, to-wit:

No. 3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Fourth District.

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now being sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error; Therefore, it is considered by this Court that the Judgment aforesaid be Affirmed in all things, and stand in full Force and Effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court, that the said Defendant in Error recover of and from the said Plaintiff in Error costs by him in this behalf expended, and that he have execution therefor.

1309 At a Supreme Court, Begun and held at Springfield on Tuesday, the Sixth day of June, in the year of our Lord one Thousand Nine hundred and Five, within and for the State of Illinois.

Present: James H. Cartwright, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; James B. Ricks, Justice; Guy C. Scott, Justice; William H. Stead, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it Remembered, That afterward, to-wit, on the twenty-third day of June, 1905, the opinion of the Court was filed in the words and figures following, to-wit:

No. 3623.

SAMUEL H. LEATH-
v.
EDWARD L. THOMAS.

Error to Fourth District.

Appeal from

1310 SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Opinion filed June 23, 1905—Rehearing denied December 13, 1905.

1. TRIAL—*objection that judgment exceeds ad damnum must be made below.* An objection that the amount of the judgment exceeds the *ad damnum* of the pleadings cannot be considered on appeal when not made in the trial court.
2. CONFLICT OF LAWS—*law of forum controls character of set-off.* The law of the State where an action is brought controls as to what character of set-off, if any, may be pleaded.
3. SAME—*courts do not take judicial notice of foreign statutes.* Statute law of foreign States must be shown by the evidence, as the courts of this State do not take judicial notice thereof.
4. SET-OFF—*demand on simple contract may be set off against judgment.* Demands upon simple contracts may be set off against demands upon judgments, whether they be judgments of the courts of this State or of foreign States.
5. APPEALS AND ERRORS—*when judgment should not be reversed.* A judgment for the defendant should not be reversed for a failure to prove one or more of the causes of action set up in his pleas of set-off if others so set up are proven.

6. SAME—*finding of referee is equal to the finding of a jury.* A finding of facts by a referee is entitled to the same weight as the verdict of a jury, and the judgment of the Appellate Court on such finding is conclusive on the Supreme Court as to questions of fact.

HAND, J., and CARTWRIGHT, C. J., dissenting.

1311 Writ of Error to the Appellate Court for the Fourth District;—heard in that court on appeal from the Circuit Court of St. Clair county; the Hon. M. W. Schaefer, Judge, presiding.

The plaintiff in error brought suit in the circuit court of St. Clair county against the defendant in error upon two judgments, aggregating the sum of $3202.38, rendered in his favor by the circuit court of the city of St. Louis, State of Missouri, against the defendant in error. The defendant in error did not contest the validity of the judgments, but filed a set-off and sought judgment against plaintiff in error. The case, by agreement, was referred to a referee to take proofs and report his conclusions as to the facts and the law. The referee filed a report, upon which the court, after overruling exceptions thereto, rendered judgment in favor of the defendant in error for $71,326.37, which judgment has been affirmed by the Appellate Court for the Fourth District, and the plaintiff in error has sued out a writ of error from this court.

The facts out of which the alleged set-off of defendant in error arose are, in brief, as follows: The defendant in error, in connection with one William A. Adams, was engaged in constructing a railroad between Belleville and East St. Louis, the corporate name of which was the Belleville and St. Louis Railway Company. Adams died in 1891, at which time it was claimed he had invested in the enterprise $23,000 and the defendant in error $50,000. The defendant in error, upon the death of Adams, applied to the plaintiff in error for financial assistance to complete the road. After some preliminary negotiations, on January 24, 1893, an agreement in writing was entered into between the plaintiff in error, the defendant in error, Bart S. Adams, a son of William A. Adams and the representative of the Adams estate, and Lucien M. Chipley, who had become interested in the construction of the road, which agreement was as follows:

1312 "ST. LOUIS, *January* 24, 1893.

"It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley $78,300 of said stock, said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 five per cent. bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2000, with interest, and Third National Bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project,

as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000 and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

"Dated January 24, 1893.

EDWARD L. THOMAS,
BART S. ADAMS,
SAMUEL H. LEATHE,
LUCIEN M. CHIPLEY.

"In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the statements made in my letter of January 12, 1893, and as security, to hold until all matters are fully arranged and paid for which I am responsible, as per said letter and statement rendered.

EDWARD L. THOMAS."

Immediately after the execution of said agreement plaintiff in error commenced the construction of said road. In March, 1893, it was determined by the parties in interest to abandon the charter under which the defendant in error had commenced the construction of said road, and thereafter to operate under a charter authorizing the construction and operation of a railroad between Belleville and East St. Louis, known as the Belleville City Railway Com-
1313 pany, granted prior to the adoption of the constitution of 1876, which was controlled by Charles W. Thomas, a brother of the defendant in error. On the 25th day of March, 1893, a meeting was held by the parties who owned and controlled the stock in the Belleville and St. Louis Railway Company and the Belleville City Railway Company, and the assets of the Belleville and St. Louis Railway Company were transferred to plaintiff in error by deed, which recited a consideration of one dollar and "other valuable considerations to it from him moving," and the plaintiff in error immediately transferred to the Belleville City Railway Company said assets, and the capital stock of said Belleville City Railway Company was issued, share for share, to the parties who had before that time held the stock of the Belleville and St. Louis Railway Company. The railroad was completed, and on November 8, 1895, the Belleville City Railway Company and the Crown Coal and Tow Company, the stock of which was owned and controlled by the parties who owned and controlled the stock of the Belleville City Railway Company, were sold and transferred to Elbert H. Gary, who represented certain undisclosed principals, for the sum of $500,000, which amount was divided among the shareholders of said railway company and coal company in proportion to their holdings of stock in said corporations.

In the year 1893 the defendant in error brought suit against the

Belleville and St. Louis Railway Company to recover for moneys advanced by him for the use of said company prior to the death of Adams. The plaintiff in error was notified of the commencement of said suit and that he could defend in the name of the company if he saw fit. He employed counsel and in the name of the company defended against the claim of the defendant in error. He also filed a bill in chancery in the name of himself, the Belleville and St. Louis Railway Company and the Belleville City Railway Company to enjoin the prosecution of said suit. The cases were tried together before the court, without a jury. The bill was dismissed for
1314 want of equity, and on December 21, 1893, judgment for $53,022.23 was rendered against the company in favor of defendant in error. Thereafter suit was brought in the circuit court of St. Clair county by the defendant in error, in the name of the Belleville City Railway Company for the use of Edward L. Thomas, against plaintiff in error, to recover the amount of said indebtedness, on the ground that at the time of the transfer of the assets of the Belleville and St. Louis Railway Company to plaintiff in error he agreed to pay the debts of said company, including its debt to defendant in error. The case was removed to the United States Circuit Court for the Southern District of Illinois, where, upon a trial before the court without a jury, a judgment was rendered in favor of the plaintiff in error, which judgment was affirmed by the United States Circuit Court of Appeals. The claim sought to be offset in this suit and upon which judgment was rendered in favor of the defendant in error is the indebtedness of the Belleville and St. Louis Railway Company to defendant in error, and which it is claimed was, in part, the "other valuable considerations to it from him moving," specified in the deed from the Belleville and St. Louis Railway Company to the plaintiff in error, and which claim, it is said, the plaintiff in error assumed and agreed to pay.

The basis of computation of the referee and the amount for which he recommended judgment in favor of the defendant in error were as follows, as appears from his report:

Defendant's judgment, December 21, 1893	$53,022.23	
Interest to January 11, 1902, 8 years and 20 days, 5 per cent	21,356.17	
		$74,378.40
Deduct Plaintiff's Judgments:		
Judgment March 5, 1896	$2,278.63	
Interest on $337.27, 8 per cent., 5 years, 10 months, 6 days	157.83	
I, 41.36	681.40	
Judgment January 5, 1897	923.75	
Interest, 6 per cent., 5 years and 6 days	278.04	
		4,319.65
Balance		$70,058.75

To this amount was added interest on the amount found due February 14, 1902, to June 30, 1902, making the amount for which judgment was rendered $71,326.37.

Gustavus A. Koerner, B. H. Canby, and Victor Koerner for plaintiff in error.

Dill & Wilderman, for defendant in error.

Per Curiam: It is first contended that the judgment exceeds the *ad damnum* of the pleas upon which judgment was rendered in favor of the defendant in error. The attention of the trial court was not challenged, by exception or otherwise, to the fact that the amount found by the referee to be due the defendant in error, and for which amount he recommended that defendant in error have judgment, exceeded the amount of the *ad damnum* of the pleas. Had the court's attention been called to that fact the pleas could readily have been amended and the error avoided. In Butler *v.* Cornell, 148 Ill. 276, it is said that an objection to the report of a referee, not made in the trial court by exception, which might have been obviated by amendment, will not be considered on appeal or writ of error. In Metropolitan Accident Ass. *v.* Froiland, 161 Ill. 30, Prairie State Loan and Building Ass. *v.* Gorrie, 167 *id.* 414, and Wheatley, Buck & Co. *v.* Chicago Trust and Savings Bank, *id.* 480, it was held that an objection that the judgment exceeds the amount of the *ad damnum* of the declaration cannot be raised for the first time on appeal. In Wheatley, Buck & Co. *v.* Chicago Trust and Savings Bank, *supra*, the point was made that the judgment exceeded the *ad damnum* laid in the declaration. The court, on page 484, said: "This, indeed, was error. But the error can not now be taken advantage of. The objection must be considered as waived by reason of its not having been made in the trial court. Had that court's attention been called to the matter the objection could readily have been obviated. (Metropolitan Accident Ass. *v.* Froiland, 161 Ill. 30; Utter *v.* Jaffray, 114 *id.* 470.) Counsel, on the contrary, made no mention of the error in either the motion for a new trial or the motion in arrest of judgment." By reason of the failure of the plaintiff in error to
1316 raise the question in the trial court, the objection was waived and cannot now be taken advantage of in this court.

It is next contended that the pleas of set-off presented no defense to the action and that the court had no jurisdiction to entertain them, and it is urged that the court, by rendering judgment thereon in favor of the defendant in error, violated section 1 of article 4 of the constitution of the United States, which provides, "full faith and credit shall be given, in each State, to the public acts, records and judicial proceedings of every other State," as it is said a set-off against a judgment is not permitted by the laws of the State of Missouri. The validity of the judgments rendered in favor of plaintiff in error by the Missouri court, and upon which suit was brought, was not attacked, but full faith and credit were given thereto. Under the statute of this State, (Hurd's Stat. 1903, chap. 110, sec. 19,) demands upon simple contracts may be set off against demands upon judgments, which statute includes a judgment rendered by a court of the State of Missouri as well as a judgment rendered by a court in this State. It has uniformly been held that each of the States of the Union may pass a law limiting the time within which an action may

be brought in said State upon a judgment rendered in a court of another State, without thereby depriving the judgment of the full faith and credit which it is entitled to under the constitution of the United States. This holding is based upon the ground that a statute of limitations affects only the remedy, and that a limitation law is a law of the forum, and must control. (Metcalf *v.* City of Watertown, 153 U. S. 671.) It is also held that a plea of set-off is a plea to the remedy. (Mineral Point Railroad Co. *v.* Barron, 83 Ill. 365; Davis *v.* Morton, 5 Bush. 160; 96 Am. Dec. 345; Second Nat. Bank of Cincinnati, *v.* Hemingray, 31 Ohio St. 168.) That being true, the statute of the State wherein the action is brought controls as to what character of set-off, if any, may be pleaded. When, therefore, suit is brought upon a judgment of another State in the courts of
1317 this State, as the statute of this State permits demands upon simple contracts to be offset against judgments, the statute of this State will control. Furthermore, the statute of the State of Missouri upon the subject of set-off was not in evidence, and the courts of this State without proof will not take judicial notice thereof. In Chicago and Alton Railroad Co. *v.* Wiggins Ferry Co. 119 U. S. 615, it was said: "Whenever it becomes necessary, under this requirement of the constitution, (art. 4, sec. 1,) for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, the law of that State must be proved as a fact. No court of a State is charged with knowledge of the laws of another State, but such laws are in that court matters of fact, which, like other facts, must be proved before they can be acted upon. This court, and the other courts of the United States, when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States; but in this court, when acting under its appellate jurisdiction, whatever was matter of fact in the court whose judgment or decree is under review is matter of fact here. This was expressly decided in Hanley *v.* Donoghue, 116 U. S. 1, in respect to the faith and credit to be given by the courts of one State to the judgments of another State, and it is equally applicable to the faith and credit due in one State to the public acts of another."

A third ground of reversal urged is, that the liability of plaintiff in error to pay the defendant in error the debt due him by the Belleville and St. Louis Railway Company was determined in favor of plaintiff in error in the suit brought by said company, for the use of defendant in error, against plaintiff in error, in the circuit court of St. Clair county, and removed by the latter to the United States Circuit Court and judgment there rendered in his favor, which judgment was affirmed by the Circuit Court of Appeals, and therefore that question is in this suit *res judicata*.. The exception to the ref-
1318 eree's report which is claimed to raise this question is the fifth, as follows: "The referee failed to find that the claim made that Leathe absolutely promised to pay the debts of the Belleville and St. Louis Railway Company had been adjudicated in favor of said Leathe and against said Thomas, as shown by the evidence." The only error assigned in the Appellate Court which can be said to present for decision the ruling of the court on that exception is the gen-

eral assignment of error: "The court erred in overruling exceptions of appellant to the report of the referee."

While the exception and assignment of error are entirely too general to properly raise the question of former adjudication insisted upon in the argument if the objection had been aptly made, the Appellate Court considered and decided that question. In the original argument in this court the defendant in error did not urge the point, and in passing upon the foregoing alleged error we reached the conclusion that, as applied to the third and fourth pleas, the circuit court erred in overruling the exception, and the argument on that branch of the case being mainly directed to those pleas, we reversed the judgments of the circuit and Appellate Courts and remanded the cause, inadvertently overlooking the issues made on the first and second pleas. As already shown, the first plea was the common counts in assumpsit, and the second was a special plea or count setting up facts showing that the plaintiff below was indebted to the defendant upon a certain contract between them and other parties which had no relevancy whatever to the alleged promise of the plaintiff to pay the debts of the Belleville and St. Louis Railway Company. The agreement set up in the second count bears date January 24, 1893, and was executed by Edward L. Thomas, Samuel H. Leathe, Bart S. Adams and Lucien N. Chipley, by which the other parties agreed to transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien N. Chipley $78,300 of said stock, they to furnish funds to carry on the construction of the railway and to negotiate and sell $500,000 of five
1319 per cent. bonds of said company. The plea then shows that in pursuance of and in carrying out the objects and purposes of that agreement certain things were done by the parties and by said railway company, and concludes with the averment that the plaintiff sold said bonds in said contract mentioned for the sum of $500,000, which said sum he then and there received; that the plaintiff expended in building said railway under said contract the sum of $300,000; that there was, at the time of making said contract, due defendant a large sum of money, to-wit, the sum of $65,000, which was to be paid said defendant as in said contract specified; that said plaintiff, after receiving said sum so expended by him under said contract and agreement, had remaining in his hands, and still has, as the proceeds of the sale of said bonds, a large sum of money, to-wit, $200,000, out of which, by the terms of said contract, said sum so due said defendant, as aforesaid, was due and payable, by means whereof plaintiff became liable to pay to said defendant said sum of $65,000, which said sum of money so due from the plaintiff to the defendant, as aforesaid, exceeds the damages sustained by the plaintiff by reason of the non-payment by the defendant of the said several judgments in said declaration mentioned, and out of which said sum of money the defendant is ready and willing, and hereby offers, to set off and allow to the plaintiff, etc.

The sufficiency of this and the preceding plea is in no way questioned as presenting subsisting causes of action, and it is not denied that a general judgment on the whole evidence is unaffected by the

failure to sustain any other count. Our Practice act expressly provides that no judgment shall be reversed on the ground of a defective count if there remains a sufficient one to sustain the verdict, and it would seem to follow that no judgment should be reversed for a failure to prove one or more causes of action where others have been proven. The findings of the circuit and Appellate Courts
1320 are conclusive in this case that the evidence sustained the first and second counts of the declaration. In fact, it is not claimed that there was an absence of evidence fairly tending to prove the allegations of the first and second pleas.

We have held that the finding of the referee is entitled to the same weight and credit as the verdict of a jury, and that the judgment of the Appellate Court, on appeal from that of the trial court, on his finding is final as to the questions of fact. (Story *v.* De Armond, 179 Ill. 510; Butler *v.* Cornell, 148 *id.* 276.) We have carefully examined the exceptions filed to the referee's report, and find no one of them which can be applied to the issues under the first and second pleas.

It is insisted on behalf of plaintiff in error that these issues were ignored upon the trial; that the real question decided arose on the third and fourth pleas, and that the referee based his conclusions upon the findings of fact; that the plaintiff in error agreed, as a consideration for the conveyance to him, to pay the debts of the railway company. There is a volume of evidence in the record, not abstracted, on the issues made on the second plea. There is also sufficient testimony shown by the record and abstract to authorize a recovery under the first plea, independent of the judgment of December 21, 1893. The finding of the referee is not based on any particular plea. That finding, and the judgment thereon, are as well supported by the first as by either the third or fourth plea. While the referee made the judgment for $53,022.23 in favor of the defendant the basis of his finding as to the amount due him, that fact does not prove that such judgment was the only evidence in the record upon which it could have been based. We have no means of determining on this record that the first and second pleas were not treated as presenting substantial issues in the case. The judgment of the Circuit Court of the United States, affirmed by the Circuit Court of Appeals, cannot affect the right of recovery under the first and second pleas, and evidently counsel for plaintiff in error
1321 so understood, the replication being general as to them, and the prior adjudication only applied to the third and fourth pleas by replication. We think, therefore, that the judgment of the Appellate Court must be affirmed without reference to the third and fourth. In fact, counsel for plaintiff in error virtually concede that the cause of action set up in the second count is not barred by any former adjudication. They say: "It may be that Thomas has a right to an accounting under the contract of January 24, 1893, set up by him in his second plea of set-off. So far as the opinion of this court may be construed to deprive Thomas of this right we concede the opinion should be modified."

The question of damages is one of fact to be determined from the evidence, not reviewable in this court.

Our conclusion is that the judgment of the Appellate Court must be affirmed.

Judgment affirmed.

HAND, J., and CARTWRIGHT, C. J., dissenting:

In this case the defendant in error filed four pleas of set-off. The first consisted of the common counts for money had and received, interest and an account stated. The second was based on the agreement of January 24, 1893, set out in full in the statement preceding the majority opinion. The third is based on the consideration for the conveyance to plaintiff in error made March 25, 1893, by the Belleville and St. Louis Railway Company, of certain property, etc., named in its deed, for one dollar and "other valuable considerations," which other valuable considerations, it was averred, included the promise of plaintiff in error to pay the defendant in error the debt due him from said company, and it was alleged that at the September term, 1893, of the St. Clair county circuit court, defendant in error brought suit against said company for the amount so due him; that the company notified plaintiff in error to defend, and that he
1322 employed counsel and defended the suit, and that the defendant in error recovered judgment for $53,022.23, which judgment is still in full force and effect. It also sets up plaintiff in error's efforts to enjoin the prosecution of said suit, the issues presented, the full hearing by the court and the dismissal of the bill. The fourth plea was as follows:

"*Fourth plea*—And for further plea in this behalf, defendant says that the said plaintiff was, before and at the time of the commencement of this suit and is still, indebted to him, the defendant, in a large sum, to-wit, the sum of $65,000, upon a contract theretofore entered into by said plaintiff and the Belleville and St. Louis Railway Company for the benefit of the defendant; and defendant avers that on, to-wit, the 25th day of March, 1893, said Belleville and St. Louis Railway Company executed and delivered to said plaintiff a deed as follows, that is to say:

" 'The grantor, the Belleville and St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the city of St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described lands, situated in the county of St. Clair and State of Illinois: All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof; also all the rights of way, easements, grading and superstructure thereon, acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the

said Leathe, that it will, upon demand, convey, by good and proper deed of conveyance, to said Leathe and his assigns, any land, easements and right of way, privileges or immunities, it may hereafter acquire.

"Dated this 25th day of March, A. D. 1893.

[SEAL.] THE BELLEVILLE AND ST. LOUIS RAILWAY CO.,
By EDWARD L. THOMAS, *President.*

Attest: HENRY M. NEEDLES, *Secretary.*

1323 "'We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES.
JOHN T. TAYLOR.
A. BOLING,
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*'

"'STATE OF ILLINOIS, *St. Clair County, ss:*

"'Before me, A. F. Miller, a notary public in and for said county, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who, being by me duly sworn, upon oath state that said Thomas signed the name of the Belleville and St. Louis Railway Company to the said instrument for the uses and purposes therein set forth, as president of said company; that he is president of said company, and executed said deed as president by order of the stockholders of said company, whose names are subscribed thereto also; that said Needles is secretary of said company, and that he attached the seal of said company to said instrument by direction of said stockholders.

"'In witness whereof I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

A. F. MILLER,
Notary Public.

Filed March 25, 1893, at 2:27 o'clock P. M.'

"And defendant avers that said deed was then and there accepted by said plaintiff; and defendant further avers that the property described in said deed was at the time of the executing and delivering of the same to plaintiff, as aforesaid, of great value, to-wit, of the value of $100,000; and defendant avers that said Belleville and St. Louis Railway Company was at the time of the making, executing and delivering of said deed and the acceptance thereof, indebted to divers persons in large sums of money, to-wit, in sums aggregating the sum of $90,000; and defendant avers that part of

the indebtedness of said railway company was its indebtedness to this defendant, in the sum of, to-wit, $65,000; and defendant
1324 avers that at the time of the making, executing, delivering and accepting of said deed to and by said plaintiff, said plaintiff had notice of said indebtedness of said railway company and he had full knowledge of the amount thereof; and defendant avers that the consideration in said deed moving from said plaintiff to said railway company, was the agreement and promise of the said plaintiff, then and there entered into and made with the said railway company, that said plaintiff, as the consideration and payment for the property thereby to him conveyed, would pay and satisfy the said indebtedness of the said railway company to said divers parties, among whom was this defendant, and that said plaintiff, in consideration thereof, agreed and promised to pay to said defendant, within a reasonable time thereafter to elapse, the said indebtedness of said railway company to this defendant, amounting to said sum of, to-wit, $65,000, which time has long since elapsed and the plaintiff has not paid said sum nor any part thereof to the defendant, by means whereof the plaintiff has become liable to pay to said defendant said sum of money, to-wit, $65,000, which sum of money so due from the plaintiff to the defendant aforesaid, exceeds the damages sustained by the plaintiff by reason of the non-payment by the defendant of the said several judgments in the said declaration mentioned, and out of which said sum of money the defendant is ready and willing, and hereby offers, to set off and allow to the plaintiff the full amount of the damages; and this the defendant is ready to verify, wherefore he prays judgment," etc.

Demurrers were overruled to said pleas, whereupon the plaintiff in error filed a general replication thereto, and a special replication to the third and fourth pleas, which was, in part, as follows: "The plaintiff says that the defendant heretofore impleaded him, the plaintiff, in an action in assumpsit begun in the name of the Belleville and St. Louis Railway Company, for the use of Edward L. Thomas, in the circuit court of St. Clair county, Illinois, to the April
1325 term, A. D. 1894, in a plea of trespass on the case on promises, to the damage of the plaintiff of $60,000, for not performing the very same promises in said third and fourth pleas of set-off mentioned, and such proceedings were thereupon had that at the same term of said court said cause was removed to the Circuit Court of the United States for the Southern District of Illinois, and afterwards, in said court last named, which had jurisdiction of the persons and the subject matter, such proceedings were had that by the consideration of said court the issues were found for the defendant in said cause, (the plaintiff herein,) and that the said plaintiff herein recovered his costs by him in defense of said cause expended." To the replication *nul tiel* record was pleaded.

The declaration in the case of the Belleville and St. Louis Railway Company for the use of Edward L. Thomas, against the plaintiff in error, tried in the United States Circuit Court, originally contained three counts. The first count was dismissed and the case tried upon

the second and third counts of the declaration, which were, in substance, as follows:

"*Second count*—And whereas, also, the defendant, on the 25th day of March, 1893, at the county of St. Clair, aforesaid, being then and there the owner of a large tract of valuable real estate, conveyed the same, by deed of that date, duly executed and acknowledged and delivered, to Samuel H. Leathe, the defendant, for a consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff; and plaintiff avers that the said defendant then and there accepted said deed; and plaintiff further avers that the other valuable consideration moving from said defendant to said plaintiff was the promise and agreement of said defendant then and there made in consideration of said deed and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the
1326 indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties; and plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to-wit, in the sum of $60,000, of which the defendant then and there had full notice; and plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised and agreed to be paid by said defendant as part of the consideration of said deed; and the plaintiff further avers that at the September term, 1893, of the circuit court in and for said county of St. Clair and State of Illinois, a court having full jurisdiction over such matters, the said Edward L. Thomas commenced an action against the said Belleville and St. Louis Railway Company to recover said amount due him; and plaintiff further avers that it caused the said defendant to be notified of the pendency of said suit, and authorized the said defendant to use its said name in defending said suit; and plaintiff further avers that said defendant, in pursuance of said notice, employed counsel and filed pleas and entered into and upon the defense of said cause; and plaintiff further avers that the issue in said cause was whether the amount claimed by said Thomas was then due and payable to him, the said Edward L. Thomas; and plaintiff further avers that after trial of the said cause, upon evidence introduced by said defendant as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in full force and effect, and which the plaintiff is ready to show by the record thereof, here now shown in court; and plaintiff avers that such judgment has not been paid, but remains still due and unpaid and in full force and effect; and plaintiff avers that afterwards, to-wit, on the day and year aforesaid, said defendant, in consideration thereof, promised the plaintiff to pay it the said amount of said judgment, according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested.

1327 "*Third count*—And whereas, also, the plaintiff, on the 25th day of March, 1893, at the county of St. Clair, afore-

said, being then and there the owner of a large tract of valuable land, conveyed the same by deed of that date, duly executed and acknowledged and delivered, to Samuel H. Leathe, the defendant, for and in consideration of one dollar and other valuable considerations moving from him, the said Samuel H. Leathe, defendant, to it, the said Belleville and St. Louis Railway Company, plaintiff; and the plaintiff avers that the other valuable considerations moving from said defendant to said plaintiff were the promise and agreement of said defendant then and there made in consideration of said deed and as payment of the purchase money of the property conveyed by said deed, that he, the defendant, would then and there satisfy and pay the indebtedness of the plaintiff then and there existing and due from the plaintiff to divers parties; and the plaintiff further avers that it was then and there indebted to Edward L. Thomas in a large sum of money, to-wit, in the sum of $60,000, of which the defendant then and there had full notice; and plaintiff further avers that the said indebtedness of the plaintiff to Edward L. Thomas was part of the indebtedness of plaintiff then and there promised to be paid by said defendant as part of the consideration of said deed; and plaintiff further avers that at the September term, 1893, of the circuit court in and for said county of St. Clair and State of Illinois, and the court having full jurisdiction over such matters, the said Edward L. Thomas commenced action against the Belleville and St. Louis Railway Company to recover said amount due him; and plaintiff further avers that it caused the said defendant to be notified of the pendency of the said suit, and authorized the said defendant to use its said name in defending said suit; and plaintiff further avers that the defendant, in pursuance of said notice, employed counsel and filed pleas and entered into and upon the defense of said cause; and plaintiff further avers that the issue of said cause
1328 was as to whether the amount claimed by said Thomas was then due and payable to him, the said Thomas; and plaintiff further avers that after the trial of said cause, upon evidence introduced by the said defendant as well as by said Edward L. Thomas, the said court rendered judgment on said cause for said Thomas in the sum of $53,022.23, which said judgment is in full force and effect and which plaintiff is ready to show by the record thereof, here now shown in court; and plaintiff avers that said judgment has not been paid, but remains still due and unpaid and in full force and effect; and plaintiff further avers that before the trial of the said cause, and while the same was standing for trial, the said defendant, in his name and in the name of the Belleville and St. Louis Railway Company and the Belleville City Railway Company, filed in said court a bill for injunction against the said Edward L. Thomas, to enjoin him from proceeding with said cause and from recovering a judgment against the said Belleville and St. Louis Railway Company on said indebtedness; that among other things, one of the issues made by said bill, and answer thereto, was as to whether the amount claimed by said Thomas from said Belleville and St. Louis Railway Company was then due and payable, and whether said defendant had assumed, by reason of said deed and as a consideration therefor, the payments of the debts of the said Belleville and St.

Louis Railway Company, of which the amount claimed by said Thomas was one; that upon said issue a full hearing was had, and it was then and there fully adjudicated and said injunction was denied and said bill dismissed, and thereupon said judgment was rendered in said suit brought by the said Thomas against the Belleville and St. Louis Railway for said sum of $53,022.23 and costs of suit; and plaintiff avers that it was then and there fully determined and adjudicated by said court that said sum was due and payable to the said Thomas, and that the said defendant had assumed the payment of said indebtedness of said Belleville and St. Louis
1329 Railway Company in consideration of the conveyance to him of said property by said deed, as aforesaid, and that the court determined and adjudicated the same upon the voluntary coming into said court by the said defendant and asking by said bill an adjudication thereof, all of which the plaintiff here now shows to the court by the record and proceedings and judgment and decree of said court in said cause, here now presented to the court; and plaintiff avers that afterwards, to-wit, on the day and year aforesaid, at the county aforesaid, said defendant, in consideration thereof, promised the plaintiff to pay it the said amount of said judgment according to its legal tenor and effect, for the use aforesaid, when thereunto afterwards requested, and although often requested, defendant has not paid said several sums of money, or any or either of them, or any part thereof, to plaintiff for the use aforesaid, but to do so has hitherto and still doth refuse, to the damage of the plaintiff, for the use aforesaid, of $60,000, wherefore it brings suit," etc.

The defendant pleaded the general issue and a jury was waived and the case was tried by the court. The plaintiff introduced the record in the action at law in the St. Clair county circuit court wherein Edward L. Thomas was plaintiff and the Belleville and St. Louis Railway Company was defendant, in which action the plaintiff recovered judgment against the defendant for $53,022.23, and proved that the plaintiff in error was given notice to defend, and that he did defend in the name of the railroad company; also the record in the chancery suit wherein the plaintiff in error, the Belle ville and St. Louis Railway Company and the Belleville City Railway Company, were complainants and the defendant in error was defendant, in which suit the evidence was preserved in the decree, and rested. The defendant introduced no evidence, but at the close of the plaintiff's evidence moved the court to exclude the evidence and render judgment for the defendant. The court took the case under advisement, and thereafter sustained said motion to ex-
1330 clude the evidence and rendered judgment for the defendant and against the plaintiff for costs, which judgment, upon writ of error, was affirmed by the United States Circuit Court of Appeals.

No evidence was introduced to sustain either the first or second pleas filed by the defendant in error, and the recovery was had under the third and fourth pleas, as clearly appears from the report of the referee referred to in the majority opinion. If the judgments of the circuit and Appellate Court can be sustained, they must be sustained under the third and fourth pleas, to which a replication of *res judicata* was interposed, and which replication, if good, is a

bar to a recovery under the third and fourth pleas and defeats the defendant in error's set-off,

We think it clear if the defendant in error had recovered a judgment in the United States Circuit Court against the plaintiff in error upon the case made there, and that judgment had been satisfied, it would be a bar to a recovery upon the cause of action set up in the third and fourth pleas of set-off filed in this case, as it is evident from the declaration filed in the case of the Belleville and St. Louis Railway Company, for the use of Edward L. Thomas, against Samuel H. Leathe, and the third and fourth pleas of set-off filed in this case, that the defendant in error in each case was attempting to recover judgment against the plaintiff in error for the same demand, viz., the debt of the Belleville and St. Louis Railway Company to the defendant in error, which it was averred the plaintiff in error had agreed to pay. The defendant in error failed in the case in the United States Circuit Court by reason of the fact that he did not prove that the plaintiff in error had agreed to pay said debt. In that suit the defendant in error relied upon the record in the action at law brought by him against the Belleville and St. Louis Railway Company and the record in the chancery suit brought by the plaintiff in error and said railway companies against him, to establish his debt and the plaintiff in error's promise to pay it, but the court held the proof was not sufficient to entitle him to recover judg-
1331 ment against plaintiff in error. The United States Circuit Court found the issues for the defendant and rendered judgment against the plaintiff for costs, which was a final judgment.

In Zimmerman *v.* Zimmerman, 15 Ill. 84, a judgment was entered by a justice of the peace showing that the parties appeared before the justice and went to trial, and after hearing the testimony he rendered judgment against the plaintiff for costs. This was held to be a judgment in bar and constituted a good defense to a subsequent suit brought upon the same cause of action. The defendant in error failed in the United States Circuit Court because his evidence was insufficient to establish his right to judgment. The defendant in that case, in effect, by his motion demurred to the evidence. The court in passing upon that motion, held the evidence insufficient to entitle the plaintiff to recover and gave judgment for the defendant. Where the plaintiff fails to make a case and the court gives a peremptory instruction in favor of defendant, and the court renders judgment upon a verdict of the jury returned under such direction, it can not be doubted the judgment is final and upon the merits and can be pleaded in bar of another action based upon the same facts. We see no difference between the legal effect of such judgment and the judgment rendered by the United States Circuit Court. The fact that the plaintiff in the case in the United States Circuit Court failed to prove, by sufficient or competent evidence, that the defendant promised to pay to him the debt of the Belleville and St. Louis Railway Company and judgment was rendered in favor of the defendant by reason of the failure to make such proof, did not leave that question an open one, subject to be retried in another suit. A plaintiff cannot try his case by piecemeal.

In the case at bar the defendant in error submitted proof of the alleged parol promise of the plaintiff in error to pay the debt due him by the Belleville and St. Louis Railway Company, and that said debt was included within the provision "other valuable
1332 considerations to it from him moving," contained in the deed of March 25, 1893. Under the declaration on file in the case in the United States Circuit Court the question of the promise of the plaintiff in error to pay said debt and that the same fell within the said provision contained in said deed was put in issue by the plea filed in that case, and the same evidence would have been material and admissible there. The defendant, however, saw fit to rely upon the record evidence only, and in this case he is bound by the record made in that case.

The doctrine of *res judicata* embraces not only what has been actually determined in the former suit, but also extends to any other matters properly involved and which might have been raised and decided in that suit. (Bennitt *v.* Wilmington Star Mining Co. 119 Ill. 9.) In Umlauf *v.* Umlauf, 117 Ill. 580, on page 584 the court said: "No principle is better settled that that where a question proper for judicial determination is directly put in issue and finally determined in a legal proceeding by a court having competent authority and jurisdiction to hear and determine the same, such decision and determination of the question will be deemed final and conclusive upon the parties and their privies in all future litigation between them in which the same question arises, so long as the judgment remains unreversed or is not otherwise set aside." In Bailey *v.* Bailey, 115 Ill. 551, at page 557 the court said: "As said in Rogers *v.* Higgins, 57 Ill. 244, the controversy cannot be re-opened to hear additional reasons which before existed and were within the knowledge of the party, in support of the same cause of action. The principle of *res judicata* embraces not only what actually was determined in the former case, but also extends to any other matter properly involved and which might have been raised and determined in it." And in Harmon *v.* Auditor of Public Accounts, 123 Ill. 122, at page 133, the court quoted with approval the language of the Supreme Court of the United States in Town of Beloit *v.*
1333 Morgan, 7 Wall. 619, where it was said: "The principle of *res judicata* reaches further. It extends not only to the questions of fact and of law which were decided in the former suit, but also to the grounds of recovery or defense which might have been, but were not, presented."

From an examination of this record we have been forced to the conclusion that the circuit and Appellate Courts erred in holding that the judgment of the Circuit Court of the United States was not a bar to the defendant in error's right of recovery in this case under the third and fourth pleas of set-off filed by him, as we think it apparent the question whether or not the plaintiff in error agreed to pay to the defendant in error the debt due him by the Belleville and St. Louis Railway Company was in issue in that case and was decided therein adversely to the defendant in error, and that that judgment was a final judgment upon the merits and binding upon

the defendant in error, and is *res judicata* of the question presented by said third and fourth pleas of set-off, and that there can be no recovery under the first and second pleas for want of evidence.

1334 STATE OF ILLINOIS, *Supreme Court, ss:*

I, Christopher Mamer, Clerk of the Supreme Court of the State of Illinois, and keeper of the Records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Supreme Court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In Testimony Whereof, I have set my hand and affixed the seal of the said Supreme Court at Springfield, this 23rd day of June A. D. 1905.

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

1335 In the Supreme Court of Illinois.

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

Be it remembered, to-wit: on the thirteenth day of July A. D. 1905, it being a day in vacation, there was filed in the office of the Clerk by the plaintiff in error, his petition for rehearing in this cause.

And afterward, to-wit on the 27th day of September A. D. 1905, the same being a day in vacation after the June term of said Court there was filed in the office of the Clerk a certain stay order which is in words and figures following, to-wit

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

STATE OF ILLINOIS, *Vermilion County, ss:*

In Vacation.

To the October Term of the Supreme Court:

The clerk of the Supreme Court will issue a stay order in the within entitled case until the hearing of the within petition for rehearing, and furnish to the petitioner a certified copy of such order.

Dated Sept. 26th. 1905

JACOB W. WILKIN,
One of the Judges of the Sup. Court of the State of Illinois.

1336 At a Supreme Court, Begun and held at Springfield on Tuesday, the Fifth day of Dec. in the year of our Lord one Thousand Nine hundred and Five, within and for the State of Illinois.

Present: James H. Cartwright, Chief Justice; Benjamin D. Magruder, Justice; Jacob W. Wilkin, Justice; Carroll C. Boggs, Justice; John P. Hand, Justice; James B. Ricks, Justice; Guy C. Scott, Justice; William H. Stead, Attorney General; Benjamin H. Brainerd, Sheriff;

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it Remembered, to-wit: on the thirteenth day of Dec. A. D. 1905, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit

3623.

SAMUEL H. LEATHE
v.
EDWARD L. THOMAS.

Error to Appellate Court of Fourth District.

And now on this day the Court having duly considered the petition for rehearing, and being fully advised in the premises overrules said petition and denies a rehearing.

1337 STATE OF ILLINOIS, *Supreme Court, ss:*

I, Christopher Mamer, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the above and foregoing is a true, perfect and complete copy of transcript of the record of proceedings in this Court, as truly taken and copied by me from the files and records now on file in and of record in my office in a certain cause entitled in this Court Samuel H. Leathe *v.* Edward L. Thomas filed in this office on the 12th day of April A. D. 1904.

Witness my hand and the Seal of said Supreme Court, at Springfield in said State, this 2nd day of February A. D. 1906.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER, *Clerk.*

1338 UNITED STATES OF AMERICA, *State of Illinois, ss:*

To the Honorable William R. Day, an Associate Justice of the Supreme Court of the United States:

Your petitioner, Samuel H. Leathe, respectfully shows that on the thirtieth day of June, 1902, in a certain cause pending in the Circuit Court of the County of St. Clair in the State of Illinois wherein your petitioner was plaintiff, and one Edward L. Thomas was defendant, a final judgment was rendered against your petitioner and in favor of the said Thomas for the sum of $71,326.37 from which said judgment your petitioner prosecuted a writ of error to said court from the Appellate Court for the Fourth District of said state, where the said judgment was affirmed on the fifteenth day of June, 1903; that your petitionor removed said judgment and the record therein by writ of error to the Supreme Court of the State of Illinois and that the said last mentioned court on the twenty-third day of June, 1905, rendered its final order and judgment therein, in and by which said final order and judgment *therein, in and by which said final order and judgment* it was ordered and adjudged that the judgment therein of the said Appellate Court be affirmed in all things and stand in full force and effect, notwithstanding the matters and things therein assigned for error by your petitioner; that the said Supreme Court of said state also adjudged the costs in said proceeding against your petitioner and ordered that the said defendant therein have execution therefor; all of which matters and things will more fully appear by reference to the record and proceedings in said cause.

Your petitioner further shows that the said Supreme Court of the State of Illinois is the highest court of said State of Illinois in which a decision in said suit could be or might have been had.

1339 And your petitioner claims the right to remove said judgment of the said Supreme Court of the State of Illinois to the Supreme Court of the United States by writ of error under and by virtue of Section 709 of the Revised Statutes of the United States because in said cause, in which said judgment for $71,326.37 was so rendered against this petitioner in said Circuit Court of St. Clair

County and was so affirmed by said Appellate Court and by said Supreme Court of said State, the defendant therein sought to enforce, upon pleas in set-off against this petitioner, the very same alleged claim and demand against, and alleged undertaking by, this petitioner that was the subject matter of a suit by said defendant in error against this petitioner in the Circuit Court of the United States for the Southern District of Illinois, wherein judgment was rendered thereon for this petitioner, the defendant therein; and because the said Supreme Court of said state, in affirming the judgment and order herein of the said Appellate Court for the Fourth District affirming the said judgment rendered against this petitioner in the cause aforesaid by the said Circuit Court of St. Clair County in said State, failed to give due force and effect to the said judgment so rendered for this petitioner upon the very same claim and demand in the said Circuit Court of the United States for the Southern District of Illinois; and because by so affirming the said judgment herein against this petitioner by the said Appellate Court for the Fourth District and permitting it to stand in full force and effect and permitting the said judgment for $71,326.37 entered against this petitioner in the said Circuit Court of said county to stand in full force and effect, and by rendering a judgment for costs herein against this petitioner and awarding execution thereon, the said Supreme Court of the State of Illinois has deprived this petitioner of a right and immunity secured to him by said judgment in his favor of the said Circuit Court of the United States for the Southern District of Illinois upon the very same claim and demand, which said right and immunity under the judgment of said Circuit Court of the United States, being an
1340 authority exercised under the United States, was specially set up and claimed therein by this petitioner; and because the said judgment rendered in favor of your petitioner in the said Circuit Court of the United States for the Southern District of Illinois on the very same claim and demand on which the judgment of the said Circuit Court of said St. Clair County was based was *res judicata* and a bar to the said action in the *said action in the* said Circuit Court of said St. Clair County; and because said judgment of said Supreme Court of the State of Illinois was rendered against your petitioner without due process of law; and because said judgment so rendered against your petitioner in said Supreme Court of said State of Illinois did not accord full faith and credit to the judgment rendered in favor of your petitioner by the said Circuit Court of the United States for the Southern District of Illinois upon the very same claim and demand. All of which matters and things will more fully appear by the record of the proceedings in said cause, which is now herewith submitted unto your Honor.

Wherefore your petitioner prays the allowance of a writ of error to said Supreme Court of the State of Illinois returnable into the Supreme Court of the United States; and that a writ of supersedeas may issue out of and under the seal of the said Supreme Court of the United States to the said Supreme Court of the State of Illinois commanding it and all persons acting under its authority to surcease, desist and refrain from all further proceedings herein, and that a cita-

tion may be awarded to the said Edward L. Thomas, the defendant in error in said proceedings in the said Supreme Court of the State of Illinois.

And your petitioner will ever pray, etc.,

SAMUEL H. LEATHE, *Petitioner.*

1341 J. S. H.

VICTOR KOERNER,
JOHN MAYNARD HARLAN,
JAMES S. HARLAN,
Attorneys for Petitioner.

Let the writ of error issue as prayed, to operate as a supersedeas on giving bond in the sum of $95,000.00.

Done at the City of Washington this 16th day of March, A. D. 1906.

WILLIAM R. DAY,
Associate Justice of the
Supreme Court of the United States.

Supreme Court of the United States. Leathe *vs.* Thomas. Petition for Writ of Error. Filed Mar. 19, 1906. C. Maner, Clerk of Supreme Court.

1342 Know all men by these presents, that we, Samuel H. Leathe, as principal, and Fidelity & Deposit Company of Maryland as surety, are held and firmly bound unto Edward L. Thomas in the penal sum of $95,000 good and lawful money of the United States, for the payment of which, well and truly to be made, we, the said Samuel H. Leathe and said Fidelity & Deposit Company of Maryland, bind ourselves, our heirs, executors, administrators and successors, jointly, severally and firmly by these presents.

Witness our hands and seals this 8th day of March, A. D. 1906.

The condition of the above obligation is such that whereas the above named Edward L. Thomas did, on the thirtieth day of June, A. D. 1902, and of the April Term of the Circuit Court held in and for the County of St. Clair in the State of Illinois, A. D. 1902, recover a judgment against the above bounden Samuel H. Leathe for the sum of Seventy-one thousand, three hundred twenty-six dollars and thirty-seven cents ($71,326.37) together with costs of suit, which said judgment was affirmed by the Appellate Court for the Fourth District of Illinois on the fifteenth day of June, 1903, and which said judgment of affirmance by said Appellate Court was affirmed by the Supreme Court of Illinois on the twenty third day of June, 1905; and whereas the said Samuel H. Leathe has sued out a writ of error from the Supreme Court of the United States to reverse the said judgment rendered in said cause by the Supreme Court of the said State of Illinois:

Now therefore if the said Samuel H. Leathe shall duly prosecute said writ of error and pay or cause to be paid the amount of said

judgment and all judgments, costs, interest and damages which the said Supreme Court of the United States shall adjudge against him in case said judgment shall be affirmed and shall abide the order and judgment of said Supreme Court of the United States in this behalf, then this obligation is to be void; otherwise to remain in full
1343 force and effect.

SAMUEL H. LEATHE. [SEAL.]
FIDELITY & DEPOSIT COMPANY,
By CHAS. R. MILLER, *Vice-President.*
[SEAL.]

Attest:
THOS. L. BERRY,
Ass't Secretary.

STATE OF ——, *County of* ——:

On this — day of —— before me, a Notary Public in and for said county and state, appeared —— ——, personally known to me, who being by me first duly sworn, did say that he is the Agent and Attorney in Fact of the Fidelity & Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the said corporation by authority of its Board of Directors; and the said —— —— acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof I have hereunto set my hand and notarial seal the day and year first above written.

——— ———,
Notary Public.

My term expires —.

I further certify that under the laws of the State of —— I have the authority to administer oaths.

——— ———.

STATE OF MARYLAND, *City of Baltimore, ss:*

On this Eighth day of March A. D. 1906 before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came Chas. R. Miller, Vice President and Thos. L. Berry, Asst. Secretary of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed, the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and sub-

scribed to the said instrument by the authority and direction
1344 of the said Corporation.

FRED S. AXTELL,
Notary Public.

[SEAL.]

Commission expires May, 1906.

Approved, March 16, 1906.
WILLIAM R. DAY,
Justice U. S. Supreme Court.

Supreme Court of the United States. Leathe *vs.* Thomas. Error to Supreme Court of Illinois. Bond. Filed Mar. 19, 1906. C. Mamer, Clerk of Supreme Court.

1345

Copy.

STATE OF ILLINOIS, *ss:*

In the Supreme Court of Illinois.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Assignment of Errors.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the said Supreme Court of Illinois in the above entitled cause there is manifest error in this, to-wit:

1. Said Supreme Court of Illinois erred in affirming the judgment of the Appellate Court for the Fourth District of Illinois entered in the above entitled cause on June 15, 1903.

2. Said Supreme Court of Illinois erred in not reversing the said judgment of said Appellate Court.

3. Said Supreme Court of Illinois erred in not holding that the pleas of set-off presented no defense to the action of plaintiff in error and that the court had no jurisdiction to entertain them; and in holding that demands upon simple contracts might be set-off by the defendant in error in this suit against the demand of the plaintiff in error herein upon the judgments in his favor upon which this suit was brought.

4. Said Supreme Court of Illinois erred in not holding that the indebtedness of the Belleville & St. Louis Railway Company
1346 to the defendant in error could not be set-off by the defendant in error against the judgments in favor of the plaintiff in error upon which this suit was brought, and in affirming the judgment against the plaintiff in error based upon the claim of the dedefendant in error that the plaintiff in error had assumed and agreed to pay such indebtedness.

5. Said Supreme Court of Illinois erred in not holding that the question of the liability of plaintiff in error to pay the defendant in error the debt due him by the Belleville & St. Louis Railway Company was determined in favor of the plaintiff in error in the suit brought by said company for the use of defendant in error against plaintiff in error in the Circuit Court of St. Clair County and removed by the latter to the Circuit Court of the United States for the Southern District of Illinois, in which judgment was rendered in favor of the plaintiff in error herein, which judgment was affirmed by the Circuit Court of Appeals, and that therefore that question was in this suit *res judicata.*

6. Said Supreme Court of Illinois erred in holding that the exceptions to the referee's report and error assigned thereon were too general to properly raise the question of *res judicata.*

7. Said Supreme Court of Illinois erred in holding the judgment entered in said cause in the Circuit Court of St. Clair County was based upon the first and second pleas by the defendant in error; and in holding that the finding and judgment herein are as well supported by the first as by either the third or fourth plea; and in holding that there was sufficient testimony to authorize a re-
1347 covery under the first plea independent of the judgment of December 21, 1893.

8. Said Supreme Court of Illinois erred in holding that the finding herein of the referee and the judgment based thereon could stand on the first and second pleas, and in not holding that they were based solely upon the third and fourth pleas; and in affirming the judgment of said Appellate Court therein without reference to the third or fourth pleas; and in holding that there was evidence tending to or that was sufficient to prove the first and second pleas.

9. Said Supreme Court of Illinois erred in not holding that the claim and demand of the defendant in error herein was the very same claim and demand which was adjudicated between the parties hereto in the Circuit Court of the United States for the Southern District of Illinois; and in not holding that the judgment entered in said last mentioned cause for the plaintiff in error herein was a bar to a recovery by the defendant in error herein.

10. Said Supreme Court of Illinois erred in its judgment entered herein because the said judgment fails to accord full faith and credit to the said judgment entered in the said Circuit Court of the United States for the Southern District of Illinois.

11. Said Supreme Court of Illinois erred in its judgment entered herein because the said judgment fails to give or accord due force and effect to the said judgment entered in the said Circuit Court of the United States for the Southern District of Illinois.

1348 12. The said judgments of the said Supreme Court of Illinois and of said Appellate Court and of said Circuit Court of St. Clair County deprive the said plaintiff in error of the right, title and immunity secured to him by the said judgment in his favor of the said Circuit Court of the United States for the Southern District of Illinois.

13. The said last mentioned judgment of the Circuit Court of

the United States for the Southern District of Illinois was *res judicata* and a bar to any recovery herein and the said Supreme Court of Illinois erred in not so holding.

14. That said judgment of said Supreme Court of Illinois was rendered against said plaintiff in error without due process of law.

VICTOR KOERNER,
JOHN MAYNARD HARLAN,
JAMES S. HARLAN,
Attorneys for Plaintiff in Error.

Filed Mar. 29 1906
C. MAMER,
Clerk of Supreme Court.

1349 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Additional Assignment of Error.

Now comes the plaintiff in error and, by leave of court first had and obtained, respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Illinois in the above entitled cause there is also manifest error in this, to-wit:

15. Said Supreme Court of Illinois erred in holding that the fifth exception to the referee's report, which was as follows: "The referee failed to find that the claim made that Leathe absolutely promised to pay the debts of the Belleville & St. Louis Railway Company had been adjudicated in favor of said Leathe and against said Thomas as shown by the evidence;" and the error assigned thereon in said Appellate Court in language as follows: "The court erred in overruling exceptions of appellant to the report of the referee," are entirely too general to properly raise the question of former adjudication.

VICTOR KOERNER,
JOHN MAYNARD HARLAN,
JAMES S. HARLAN,
Counsel for Plaintiff in Error.

1350 [Endorsed:] Supreme Court United States. Samuel H. Leathe plaintiff in error *vs.* Edward L. Thomas defendant in error. Additional Assignment of Error. Harlan & Harlan Marquette Building Chicago Telephone Central 401

Endorsed on cover: File No. 20,172. Illinois supreme court. Term No. 246. Samuel H. Leathe, plaintiff in error, *vs.* Edward L. Thomas. Filed April 3d, 1906. File No. 20,172.

(20,172.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 670.

SAMUEL H. LEATHE, PLAINTIFF IN ERROR,

vs.

EDWARD L. THOMAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 10, 1906.

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel H. Leathe, plaintiff in error, and Edward L. Thomas, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Samuel H. Leathe as by his complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Filed Mar. 19, 1906.

C. MAMER,
Clerk of Supreme Court.

* * * * * * *

CAPTION.

At a Supreme Court, Begun and held at Springfield on Tuesday, the Fifth day of April, in the year of our Lord One Thousand Nine Hundred and Four, within and for the State of Illinois.

Present: John P. Hand, Chief Justice; Benjamin D. McGruder, Justice; Jacob W. Wilkins, Justice; James H. Cartwright, Justice; Carroll C. Boggs, Justice; James B. Ricks, Justice; Guy C. Scott, Justice; Howland J. Hamlin, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to-wit: on the 12th day of April, A. D. 1904, the same being one of the days of the term of Court aforesaid, there issued out of this Court a certain Writ of Error directed to the Clerk of the Appellate Court of the Fourth District, which is in words and figures following, to-wit:

* * * * * * *

DECLARATION.

Be it remembered that on the 31st day of December, 1897, the following declaration was filed.

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Samuel H. Leathe, plaintiff in this suit, complains of Edward L. Thomas, on a plea of debt.

For that whereas, the plaintiff, by the consideration and judgment of the Circuit Court of the City of St. Louis, Missouri, on the fifth day of March, A. D. 1896, recovered a judgment against the defendant by the name of Edward L. Thomas, for the sum of two thousand, two hundred and seventy eight dollars, and sixty-three cents ($2,278.63), together with interest on the sum of Three Hundred and Thirty Seven Dollars and twenty-seven cents (part of said aggregate indebtedness) from said date, at the rate of eight per cent. per annum, until paid, and with interest on the sum of Nineteen Hundred and Forty-one dollars and thirty six cents (the balance of said aggregate indebtedness) at the rate of six per cent. per annum until paid, and also costs of suit as by the record thereof in said Court appears, a copy of which record duly authenticated the plaintiff now here in Court produces, and which said debt, damages

and costs amount to a large sum of money, to-wit Four thousand dollars.

And plaintiff avers that said judgment is in full force and effect and not reversed, annulled or satisfied. Thereby an action had accrued to the plaintiff to have from defendant the sum of Four Thousand Dollars.

And for that whereas, also by the consideration and judgment of the Circuit Court of the City of St. Louis, State of Missouri, on the fifth day of January, 1897, the plaintiff recovered a judgment against the defendant by the name of Edward L. Thomas, for the sum of Nine hundred and twenty-three dollars and seventy-five cents ($923.75) debt and costs of suit, as by the record thereof in said Court appears, a copy of which record, duly authenticated, the plaintiff now here in Court produces, which said debt, damages and costs amount to a large sum of money, to-wit, Two Thousand Dollars.

And plaintiff avers said judgment is in full force and effect and not reversed, annulled or satisfied.

Whereby an action has accrued to the plaintiff to demand and have from the defendant the said amount mentioned, to-wit: two thousand dollars. Yet the defendant, has not paid the said amounts, nor any parts thereof, but fails and refuses so to do to Plaintiff's damage of Six Thousand Dollars, wherefore he brings his suit, &c.

By G. A. KOERNER &
V. K. KOERNER,
Att'ys for Plaintiff.

Copy of Instrument Sued On.

STATE OF MISSOURI, *City of St. Louis, ss:*

In the Circuit Court, City of St. Louis, February Term, 1896.

THURSDAY, *March 5th,* 1896.

(96033.)

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Now at this day comes the plaintiff by attorney, but the defendant, although duly notified by publication and having heretofore entered his appearance herein and having this day withdrawn his answer herein and declined to plead further now comes not but makes default: Wherefore on motion of plaintiff it is ordered by the Court that the petition and attachment herein be taken against said defendant as confessed. Thereupon the Court finds that said defendant is indebted to the plaintiff on the several counts of the petition herein by reason of the instruments of writing sued on as follows: on the first count in the sum of three hundred and thirty-

seven and 27/100 dollars, on the second count in the sum of twelve hundred and thirty-eight and 98/100 dollars, on the third account in the sum of five hundred and eighty-five and 80/100 dollars, on the fourth account of said petition in the sum of one hundred and sixteen and 58/100 dollars, making in the aggregate the sum of Two Thousand two hundred and seventy eight and 63/100 Dollars.

It is therefore considered and adjudged by the Court that the attachment herein be sustained and that the plaintiff recover of said defendant the aggregate indebtedness aforesaid as found to be due, to-wit:

Said sum of Two thousand two hundred and seventy-eight and 63/100 Dollars, with interest on the sum of Three hundred and thirty-seven and 27/100 Dollars (part and parcel of said aggregate indebtedness) from this date at the rate of eight per cent. per annum until paid, and with interest on the sum of Nineteen Hundred and forty-one and 36/100 Dollars, (the balance of said aggregate indebtedness) from this date at the rate of six per cent. per annum until paid, and also recover of said defendant his costs and charges herein expended, and that execution issue herein in conformity with this judgment.

STATE OF MISSOURI, *City of St. Louis, ss:*

I, Thomas B. Rodgers, Clerk of the Circuit Court, City of St. Louis, certify that the above and foregoing is a true, full and complete copy of the judgment rendered in the above entitled cause as fully as the same remains of record in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Office in the City of St. Louis, [SEAL.] this 24th day of December, A. D. 1897.

THOS. B. RODGERS,
Clerk Circuit Court.

* * * * * * *

PLEA OF SET OFF.

Be it remembered that on the 8th day of January, 1898, the following plea of set-off was filed.

STATE OF ILLINOIS, *St. Clair County:*

In the Circuit Court, to the January Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

Anw now comes the defendant by A. S. Wilderman, his attorney, and for plea in this behalf says that the plaintiff was before and at

the time of the commencement of this suit, and still is indebted to him, the defendant, in the sum of Sixty-five Thousand Dollars, for so much money before that time received by the plaintiff for the use of the defendant; and in a like sum for interest on divers sums of money before that time for borne by the defendant to the plaintiff at his request for divers spaces of time before then elapsed; and in a like sum for money found to be due from plaintiff to defendant in an account then and there stated between them; which said sums of money so due from the plaintiff by reason of the non-performance by the defendant of the several supposed promises in the said declaration mentioned and out of which said sums of money the defendant is ready and willing and hereby offers to set off and allow to the plaintiff the full amount of the said damages.

And this the defendant is ready to verify, wherefore he prays judgment, &c.

By DILL & WILDERMAN,
Attorney- for the Defendant.

Copy of Account in Plea Set Off.

Samuel H. Leathe, Dr., to Edward L. Thomas, Defendant.

To money received by plaintiff for use of Defendant..	$65000.00
To money for interest on sums foreborne to Plaintiff by Defendant	65000.00
To money due on account stated.....	65000.00

* * * * * * *

SECOND SPECIAL PLEA.

Be it remembered that on the 10th day of February, 1898, the following 2d Special Plea of set-off was filed:

And for further plea in this behalf Defendant says that the said Plaintiff was before and at the time of the commencement of this suit and still is indebted to him the defendant in a large sum, to wit the sum of Seventy Thousand Dollars, upon a contract theretofore entered into by said Plaintiff with Defendant which said contract is as follows, that is to say:

ST. LOUIS, *January* 24, 1893.

It is agreed that we will transfer to Samuel H. Leathe $255,000.00 of the stock of the Belleville & St. Louis Railway Company, and to Lucien M. Chipley $78,300.00 of said stock.

Said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000.00 5 per cent. bonds of said Company. The present bonds, $150,000.00 to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued. He to advance the amount necessary to take up four bonds now held by Mrs. Johnson $2000.00 with interest and Third National Bank $750.00 with interest in St. Louis.

Same proportion of stock to be maintained in coal or other Companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe, by Edward L. Thomas.

Edward L. Thomas to have $104,000.00 of stock, Bart S. Adams $50,000.00 and John T. Taylor $12,700.00; each part- to receive back amounts advanced to the enterprise as soon as the bonds are sold.

Said Thomas and Adams to receive amount as per statement me rendered and said Leathe to receive amount to be advanced by him and balance to go into the treasury of the Railway Company.

First proceeds of bonds to be applied to payment of amounts advanced by said Leathe until satisfied.

Dated January 24th, 1893.

(Signed) EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY

In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe, all sums coming to me as a guarantee of the statement made in my letter to him of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

Dated Jan. 24th, 1893.

(Signed) EDWARD L. THOMAS.

And defendant further avers that afterwards to-wit: on the 25th day of March, A. D. 1893, the property of the said Railway Company in said contract mentioned was by mutual consent transferred to a corporation known as the Belleville City Railway Company, and the said enterprise was thereafter exclusively carried on under the name and franchises of the said Belleville City Railway Company. And Defendant avers that on said last mentioned day said Plaintiff entered into the following agreement touching and regarding the bonds of said Railway Company that is to say,

At a meeting of the Stockholders of the Belleville City Railway Company, held at the office of the Company in the City of Belleville, on the 25th day of March, A. D. 1893, the following proceedings were had:—Present, Charles W. Thomas, owning 4996, E. L. Thomas, one share, Henry M. Needles, one share, John T. Taylor, one share, Bartlett S. Adams, one share; Mr. Adams was made president and C. W. Thomas Secretary. The following named persons were unanimously elected Directors of the Company, Charles W. Thomas, Edward L. Thomas, Henry M. Needles, John T. Taylor, and Bartlett S. Adams, and the meeting adjourned.

BART. S. ADAMS,
Pres. of Meeting.

(Signed) CHARLES W. THOMAS,
Secretary.

At a meeting of the Directors of the Belleville City Railway Company, held at its office in the City of Belleville immediately after the adjournment of the stockholders' meeting, March 25th, 1893, the following proceedings were had, all the Directors being present:

Mr. Bartlett S. Adams was elected President of the Company, and Mr. Charles W. Thomas Secretary, Mr. Taylor introduced the following resolution and moved its adoption: "Resolved, That a call of one hundred per cent. be made upon the capital stock of this Company, payable on or before May first, 1893, and that the Secretary be directed to give written notice of this to all the stockholders, within 20 days." Mr. E. L. Thomas seconded the motion and it was unanimously adopted.

Mr. Samuel L. Leathe now appeared before the board and proposed to sell and convey to this Company for the sum of $499,500.00 certain property described and referred to in his deed to the Company of this date which was produced but which is not delivered. Mr. Needles moved that the proposition be accepted upon the condition that Mr. Leathe should give this Company credit on such purchase money for any amount which he may hereafter owe as a stockholder of the Company on account of calls made upon any of its stock he may hereafter acquire and may credit on said stock calls the value of the service he may hereafter perform in floating this Company's bonds, and also the indebtedness due him from the Company as the purchase price of said property.

Mr. Adams seconded the motion and it was unanimously adopted. Mr. Charles W. Thomas then assigned and transferred upon the stock transfer book of the Company, subject to calls made thereon to Samuel H. Leathe.

Mr. Needles moved that the deed offered by Mr. Leathe be accepted as full payment of the call of one hundred per cent. made at this meeting upon his 4995 shares of the stock of this Company upon the condition that he float the $500,000. of bonds of this Company, heretofore authorized to be issued, any of such bonds that he sells to net this Company such a price as may be hereafter agreed upon between him and the Board of Directors of this Company, and all the bonds he takes, or that may be paid out for property or prior indebtedness of the Company to be accounted for by him at par to the end that the railway of this Company may be at once constructed and operated from some point within the original city of Belleville to the Mississippi river; and upon further condition that Mr. Leathe protect this Company from any decree foreclosing the mortgage to secure said bonds until one year after its railway is in operation and that Mr. Leathe be requested to sign the record of the proceedings of this Board at the foot of this resolution as an acceptance by him of its terms, and an agreement to perform its conditions.

Mr. Adams seconded the motion and it was unanimously adopted.

I accept the terms of the foregoing resolution.

(Signed) SAMUEL H. LEATHE.

And the Board adjourned to meet subject to the call of the President.

(Signed) BART. S. ADAMS, *Pres.*
(Signed) CHARLES W. THOMAS, *Sec'y.*

And Defendant further avers that said Plaintiff on to-wit: the ninth day of November, A. D. 1895, sold said bonds in said contract an- agreement for the sum of Five Hundred Thousand Dollars which said sum he the said Plaintiff then and there received. And Defendant avers that said Plaintiff has expended in building said Railway under said contract and agreement a large sum of money, to wit—the sum of Three Hundred Thousand Dollars. And Defendant avers that there was at the time of the making of the contract due defendant as per statement in said contract set forth a large sum of money, to-wit, the sum of Seventy Thousand Dollars, which was to be paid Defendant as in said contract specified.

The Defendant avers that said Plaintiff after receiving said sum so expended as aforesaid by him under said contract and agreement had remaining in his hands, and still has the proceeds of the said sale of said bonds a large sum of money, to-wit, Two Hundred Thousand Dollars, out of which by the terms of said contract said sum so due said Defendant as aforesaid was due and payable to-wit on the day of year last aforesaid at the County aforesaid. By means whereof Plaintiff became liable to pay to said Defendant said sum of Seventy Thousand Dollars which said sum of money so due from the Plaintiff to the Defendant as aforesaid exceeds the damages sustained by the plaintiff by reason of the non-payment by the Defendant of the said several judgments in said declaration mentioned and out of which said sum of money the defendant is ready and willing and hereby offers to set off and allow to the Plaintiff the full amount of said damages, and this the Defendant is ready to verify wherefore he prays judgment, &c.

By DILL & WILDERMAN,
Attorney- for Defendant.

* * * * * * *

THIRD SPECIAL PLEA.

Be it remembered that on the 10th day of February, 1898, the following 3rd special plea of set-off was filed:

And for further plea in this behalf the Defendant says that the said Plaintiff was before and at the time of commencement of this suit and still is indebted to him the Defendant in a large sum of money, to wit, in the sum of Sixty Five Thousand Dollars.

For that whereas, the Belleville and St. Louis Railway Company on to-wit, the 25th day of March, A. D. 1893, at the County of St. Clair aforesaid, being then and there the owner of a large tract of valuable land conveyed the same by deed of that date duly acknowledged and delivered to said Plaintiff, for and in consideration of one Dollar and other valuable considerations moving from him the

said Plaintiff to it the said Belleville and St. Louis Railway Company.

And Defendant avers that said Plaintiff then and there accepted said deed. And Defendant further avers that the other valuable consideration moving from said Plaintiff to said Railway Company was the promise and agreement of said Plaintiff then and there made in consideration of said deed, and as payment of the purchase money of the property conveyed by said deed, that he, the Plaintiff, would then and there satisfy and pay the indebtedness of the said Railway Company, then and there existing and due, from the said Railway Company to divers parties.

And Defendant further avers that said Railway Company was then and there indebted to the Defendant in a large sum of money, to-wit, in the sum of Sixty Thousand Dollars, of which the said Plaintiff then and there had full notice.

And Defendant further avers that the said indebtedness of the said Railway Company to the Defendant was part of the indebtedness of the said Railway Company, then and there promised and agreed to be paid by said Plaintiff as part of the consideration of said deed.

Defendant further avers that at the September Term, A. D. 1893, of the Circuit Court in and for the said county of St. Clair and State of Illinois, a Court having full jurisdiction of such matters, said Defendant commenced an action against said Railway Company, to recover said amount so due him as aforesaid.

And Defendant avers that said Railway Company caused said Plaintiff to be notified of the pendency of said action, and authorized the said Plaintiff to defend said suit in its name, if he, Plaintiff, saw fit, and Defendant avers that said plaintiff in pursuance of said notice employed counsel, filed pleas, and entered into and upon the defense of said cause.

And Defendant avers that the issue of said cause was as to whether the amount claimed by said defendant from said Railway Company was then due and payable to him the said Defendant.

And Defendant further avers that after the trial of said cause upon evidence introduced by said Defendant and by said Plaintiff acting as aforesaid, the said Court rendered a judgment for this Defendant, Plaintiff in said cause, and against the Defendant in said cause, in the sum of $53,022.23 which said judgment is in full force and effect; and which this Defendant is ready to show by the record thereof, here now shown in Court.

And Defendant further avers, that before the trial of said cause, in said Court, and while the same was standing for trial, the said Plaintiff, in his name and in the name of the said Belleville and St. Louis Railway Company and in the name of the Belleville City Railway Company, filed in said Court a bill for injunction, against this Defendant, to enjoin him from proceeding with his said cause against said Belleville and St. Louis Railway Company, and from recovering a judgment in said cause against said Railway Company on said indebtedness; that among other things one of the issues made by the said bill and the answer of this Defendant

thereto, was as to whether the amount claimed by this Defendant from the said Belleville and St. Louis Railway Company was then due and payable, and whether said plaintiff herein, had assumed by reason of said deed from said Railway Company to him, the Plaintiff, and as part of the consideration therefore, the payments of the debts of the said Railway Company of which the amount claimed by this Defendant was one. That upon said issue a full hearing was had by the Court and it was then and there fully adjudicated and said injunction was denied, and said bill dismissed.

All of which this Defendant here now shows to the Court by the records and proceedings and decree of said Court here now shown to the Court. By means whereof the Plaintiff became liable to pay the amount of said judgment, with lawful interest, to-wit, the sum of Sixty-five Thousand Dollars, to the Defendant, which said sum of money so due from Plaintiff to Defendant as aforesaid exceeds the damages sustained by the plaintiff by reason of the non-payment of the said several judgments in said declaration mentioned and out of which said sum of money the Defendant is ready and willing and hereby offers to set off and allow to the Plaintiff, the full amount of the said damages, and this the defendant is ready to verify, wherefore he prays judgment, &c.

By DILL & WILDERMAN,
Attorneys for Defendant.

* * * * * * *

FOURTH SPECIAL PLEA.

Be it remembered that on the 12th day of April, 1898, the following 4th plea of set-off was filed:

And for further plea in this behalf, defendant says that the said plaintiff was before and at the time of the commencement of this suit and still is indebted to him the defendant in a large sum, to-wit, in the sum of Sixty Five Thousand Dollars upon a contract theretofore entered into by said plaintiff and the Belleville and St. Louis Railway Company for the benefit of the defendant.

And defendant avers that on, to-wit, the twenty-fifth day of March, A. D. 1893, said Belleville and St. Louis Railway Company executed and delivered to said plaintiff a deed as follows, that is to say:—

The grantor, the Belleville and St. Louis Railway Company, a Corporation of the State of Illinois, in consideration of One Dollar to it in hand paid by Samuel H. Leathe of the City of St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe, all the following described land situated in the County of St. Clair and State of Illinois: All that tract of land conveyed by the St. Louis, Alton & Terre Haute Railroad Company to the said grantor by deed dated December 12th, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof.

Also all the rights of way, easements, grading, and superstructure

thereon acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the said Leathe that it will upon demand convey — good and proper deed of conveyance to said Leathe and his assigns any land, easements, right of way privilege or immunity it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

EDWARD L. THOMAS. [SEAL.]
THE BELLEVILLE AND ST. LOUIS RAILWAY COMPANY,
By EDWARD L THOMAS, *President.*

[SEAL.]
Attest:
HENRY M. NEEDLES, *Secretary.*

We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS.
HENRY M. NEEDLES.
JOH T. TAYLOR.
A. BOLING.
EDWARD L. THOMAS.
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, *Proxy.*

STATE OF ILLINOIS, *St. Clair County, ss:*

Before me, A. F. Miller, a notary public in and for said County, this day appeared Edward L. Thomas and Henry M. Needles, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and who, being by me duly sworn upon oath state, that said Thomas signed the name of the Belleville & St. Louis Railway Company to said instrument for the uses and purposes therein set forth as president of said Company. That he is President of said Company and executed said deed as president by order of the stockholders of said Company whose names are subscribed thereto also.

That said Needles is secretary of said Company and that he attached the seal of said Company to said instrument by direction of said stockholders.

In witness whereof, I have hereunto set my hand and notarial seal this 25th day of March, A. D. 1893.

A. F. MILLER,
Notary Public.

Filed March 25th, 1893, at 2:27 o'clock P. M.

And Defendant avers that said deed was then and there accepted by said Plaintiff.

And Defendant further avers that the property described in said

deed was at the time of the executing and delivering of the same to Plaintiff as aforesaid of great value, to-wit, of the value of One Hundred Thousand Dollars.

And Defendant avers that said Belleville and St. Louis Railway Company was at the time of the making, executing and delivering of said deed by said Plaintiff and of the acceptance thereof by said Plaintiff as aforesaid indebted to divers persons in large sums of money, to-wit, in sums aggregating the sum of Ninety Thousand Dollars.

And Defendant avers that part of the indebtedness of said Railway Company was its indebtedness to the Defendant in the sum of to-wit, Sixty Five Thousand Dollars.

And Defendant avers that at the time of the making, executing, delivering and accepting of said deed to and by said Plaintiff, said Plaintiff had notice of said indebtedness of said Railway Company and had full knowledge of the amount thereof. And Defendant avers that the consideration in said deed moving from said plaintiff to said Railway Company, was the agreement and promise of said Plaintiff then and there entered into and made with the said Railway Company that said Plaintiff as a consideration and payment for the property thereby to him conveyed would pay and satisfy the said indebtedness of the said Railway Company to said divers parties among whom was this defendant and that said Plaintiff in consideration thereof agreed and promised to pay to said Defendant within a reasonable time thereafter to elapse the said indebtedness of said Railway Company to this Defendant amounting to said sum of to-wit, Sixty Five Thousand Dollars, which time has long since elapsed and Plaintiff has not paid said sum nor any part thereof to the Defendant.

By means whereof Plaintiff has become liable to pay to said Defendant said sum of money, to-wit, Sixty Five Thousand Dollars, which said sum of money so due from the Plaintiff to the Defendant as aforesaid exceeds the damages sustained by the Plaintiff by reason of the non-payment by the Defendant of the said several judgments in said declaration mentioned and out of which said sum of money the defendant is ready and willing and hereby offers to set off and allow to the Plaintiff the full amount of the said damages, and this the Defendant is ready to verify wherefore he prays judgment, &c.

By —— ——,
Attorneys for Defendant.

* * * * * * *

REPLICATION TO PLEA.

Be it remembered that on the 7th day of March, 1898, the following replication to plea of set-off of common counts was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, January Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now comes the said Plaintiff, by his attorney, and as to the plea of the said Defendant marked plea of set-off of common count, says that he did not promise and undertake in manner and form as the said Defendant in said plea of set-off has maintained, and of this he puts himself upon the country.

G. A. KOERNER &
VICTOR K. KOERNER,
Att'ys for Plaintiff.

* * * * * * *

REPLICATION TO SPECIAL PLEAS.

Be it remembered that on the 14th day of June, 1898, the following replication to the special pleas of set-off was filed:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, April Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now again comes Plaintiff, and for replication to all of special pleas of set-off herein filed, the Plaintiff says that he did not become liable to pay to the said Defendant the sum of money in said pleas or any or either of them mentioned, in manner and form as is alleged in said pleas, and of this he puts himself upon the country.

And the plaintiff doth the like.

DILL & WILDERMAN,
Att'ys for Plaintiff.

And for further replication to said special pleas of set-off filed by said defendant, plaintiff says he did not promise and undertake in manner and form as the defendant has in said pleas alleged, and this he prays may be inquired of by the country.

By G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Pl'ff.

And the plaintiff doth the like.
By DILL & WILDERMAN,
Att'ys for Pl'ff.

ADDITIONAL REPLICATIONS.

Be it remembered that on the 12th day of September, 1898, the following additional replication to the 3rd, and 4th pleas of set-off was filed:

STATE OF ILLINOIS, *County of St. Clair, ss:*

In the Circuit Court, September Term, 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And for further replication to the third and fourth pleas of set-off filed by said defendant, the plaintiff says, that the defendant ought not to have an action to recover against him the said Plaintiff on matters in said pleas alleged because he says, that the said defendant heretofore, impleaded him the said plaintiff in an action in assumpsit, begun in the name of the Belleville & St. Louis Railway Company, for the use of said Edward L. Thomas, said defendant in the said Circuit Court of St. Clair County, Illinois, to the April Term, A. D. 1894, of said Court, in a certain plea of trespass on the case on promises, to the damage of the plaintiff of Sixty Thousand Dollars, for not performing the very same promises in said third and fourth plea- of set-off mentioned, and such proceedings were therefore had that afterwards, at the same term by the consideration of said Court, said cause was removed to the Circuit Court of the United States for the Southern District of Illinois, and afterwards, in said court last named which then and there had jurisdiction of the persons and the subject matter, such proceedings were had that by the consideration of said Court the issues were found for the defendant in said cause (the plaintiff herein) and that he, said plaintiff herein, recovered his costs by him in his defense of said cause expended. And this the plaintiff is ready to verify.

By G. A. KOERNER,
VICTOR K. KOERNER,
Att'ys for Pl'ff.

REJOINDER.

Be it remembered that on the 14th day of June, 1898, the following rejoinder to the additional replication to the 3rd and 4th pleas of set-off was filed:

STATE OF ILLINOIS, *St. Clair County, ss:*

In the Circuit Court, September Term, A. D. 1898.

SAMUEL H. LEATHE
vs.
EDWARD L. THOMAS.

Debt.

And now comes the said Defendant and for a rejoinder to plaintiff's additional replication to defendant's third and fourth pleas says *precludi non,* because he says, there is no record of the supposed proceeding in said replication mentioned remaining in the said Circuit Court of the United States for the Southern District of Illinois, and this the defendant prays may be inquired of by the Court.

A. S. WILDERMAN,
Att'y for Defendant.

* * * * * * *

REFEREE'S CONCLUSION OF LAW.

Conclusion of Law.

The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff for the amount of said judgment and interest thereon, less the amount of plaintiff's said judgments against defendant and interest thereon.

Defendant's judgment, Dec. 21st, 1893		53,022.23
Int. to Jan. 11, 1902, 8 yrs. 20 days, 5%		21,356.17
		$74,373.40
Deduct plaintiff's judgment:		
Judgm't Mar. 5th, '96	$2,278.63	
Int. on 337.27 8% 5 yrs. 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgm't Jan. 5th, '97	923.75	
Int. 6% 5 yrs. 6 days	278.04	
		4,319.65
Balance		$70,058.75

for which judgment is recommended in favor of defendant Edward L. Thomas.

Respectfully submitted,

MARSHALL W. WEIR, *Referee.*

* * * * * * *

ERRORS ASSIGNED IN SUPREME COURT OF ILLINOIS.

STATE OF ILLINOIS:

In the Supreme Court, to June Term, 1904.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Error to Appellate Court, Fourth District of Illinois.

And now comes Samuel H. Leathe, the Plaintiff in error herein, and says that there is in the record and proceedings manifest error in this—

1. The Court erred in not reversing the judgment of the Circuit Court of St. Clair County, Illinois.

2. The Court erred in affirming the judgment of the said Circuit Court of St. Clair County.

And the said Plaintiff in error, therefore prays that the said judgment of the Circuit Court of St. Clair County, and of the Appellate Court of the 4th District may be reversed.

GUSTAVE A. KOERNER,
Attorney for Plaintiff in Error.

* * * * * * *

OPINION OF SUPREME COURT OF ILLINOIS.

Writ of Error to the Appellate Court for the Fourth District:—heard in that court on appeal from the Circuit Court of St. Clair county the Hon. M. W. Schaefer, Judge, presiding.

The plaintiff in error brought suit in the circuit court of St. Clair county against the defendant in error upon two judgments, aggregating the sum of $3202.38, rendered in his favor by the circuit court of the City of St. Louis, State of Missouri, against the defendant in error. The defendant in error did not contest the validity of the judgments, but filed a set-off and sought judgment against plaintiff in error. The case, by agreement was referred to a referee to take proofs and report his conclusions as to the facts and the law. The referee filed a report, upon which the court, after overruling exceptions thereto, rendered a judgment in favor of the defendant in error for $71,326.37 which judgment has been affirmed by the Appellate Court for the Fourth District, and the plaintiff in error has sued out a writ of error from this court.

The facts out of which the alleged set-off of defendant in error arose are, in brief, as follows: The defendant in error, in connection with one William A. Adams, was engaged in constructing a railroad between Belleville and East St. Louis, the corporate name of which was the Bellevue and St. Louis Railway Company. Adams died in 1891, at which time it was claimed he had invested in the enterprise $23,000 and the defendant in error $50,000. The defendant in error, upon the death of Adams, applied to the plaintiff in error for financial assistance to complete the road. After some preliminary negotiations, on January, 24, 1893, an agreement in writing was entered into between the plaintiff in error, the defendant in error, Bart S. Adams, a son of William A. Adams and the representative of the Adams estate, and Lucien M. Chipley, who had become interested in the construction of the road, which agreement was as follows:

ST. LOUIS, *January* 24, 1893.

"It is agreed that we will transfer to Samuel H. Leathe, $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley, $78,300 of said stock, said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 five per cent. bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2000, with interest, and Third National Bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams, $50,000 and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

"Dated January 24, 1893.

EDWARD L. THOMAS.
BART S. ADAMS.
SAMUEL H. LEATHE.
LUCIEN M. CHIPLEY.

"In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the statements made in my letter of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

EDWARD L. THOMAS.

Immediately after the execution of said agreement plaintiff in error commenced the construction of said road. In March, 1893, it

was determined by the parties in interest to abandon the charter under which the defendant in error had commenced the construction of said road, and thereafter to operate under a charter authorizing the construction and operation of a railroad between Belleville and East St. Louis, known as the Belleville City Railway Company, granted prior to the adoption of the constitution of 1870, which was controlled by Charles W. Thomas, a brother of the defendant in error. On the 25th day of March, 1893, a meeting was held by the parties who owned and controlled the stock in the Belleville and St. Louis Railway Company and the Belleville City Railway Company and the assets of the Belleville and St. Louis Railway Company were transferred to plaintiff in error by deed, which recited a consideration of one dollar and "other valuable considerations to it from him moving," and the plaintiff in error immediately transferred to the Belleville City Railway Company said assets, and the capital stock of said Belleville City Railway Company was issued, share for share, to the parties who had before that time held the stock of the Belleville and St. Louis Railway Company. The railroad was completed and on November 8, 1905, the Belleville City Railway Company and the Crown Coal and Tow Company, the stock of which was owned and controlled by the parties who owned and controlled the stock of the Belleville City Railway Company, were sold and transferred to Elbert H. Gary, who represented certain undisclosed principals, for the sum of $500,000, which amount was divided among the shareholders of said railway company and coal company in proportion to their holdings of stock in said corporations.

In the year 1893, the defendant in error brought suit against the Belleville and St. Louis Railway Company to recover for moneys advanced by him for the use of said company prior to the death of Adams. The plaintiff in error was notified of the commencement of said suit and that he could defend in the name of the company if he saw fit. He employed counsel in the name of the company defended against the claim of the defendant in error. He also filed a bill in chancery in the name of himself, the Belleville and St. Louis Railway Company, and the Belleville City Railway Company to enjoin the prosecution of said suit. The cases were tried together before the court, without a jury. The bill was dismissed for want of equity, and on December 21, 1893, judgment for $53,022.23 was rendered against the company in favor of defendant in error. Thereafter suit was brought in the circuit court of St. Clair county by the defendant in error, in the name of the Belleville City Railway Company for the use of Edward L. Thomas against plaintiff in error, to recover the amount of said indebtedness, on the ground that at the time of the transfer of the assets of the Belleville and St. Louis Railway Company to plaintiff in error he agreed to pay the debts of said company, including its debt to defendant in error. The case was removed to the United States Circuit Court for the Southern District of Illinois, where, upon a trial before the court without a jury, a judgment was rendered in favor of the plaintiff in error, which judgment was affirmed by the United States Circuit Court of Appeals. The claim sought to be offset in this suit and upon which

judgment was rendered in favor of the defendant in error is the indebtedness of the Belleville and St. Louis Railway Company to defendant in error, and which it is claimed was, in part, the "other valuable considerations to it from him moving," specified in the deed from the Belleville and St. Louis Railway Company to the plaintiff in error, and which claim, it is said, the plaintiff in error assumed and agreed to pay.

The basis of computation of the referee, and the amount for which he recommended judgment in favor of the defendant in error were as follows, as appears from his report:

Defendant's judgment, December 21, 1893..	$53,022.23	
Interest to January 11, 1902, 8 years and 20 days, 5 per cent.....	21,356.17	
		$74,378.40
Deduct plaintiff's judgments:		
Judgment March 5, 1896.....	2,278.63	
Interest on $337.27, 8 per cent. 5 years 10 months and six days.....	157.83	
I., 41.36	681.40	
Judgment, January 5, 1897.....	923.75	
Interest, 6 per cent. 5 years and six days...	278.04	
		$4,319.65
Balance		$70,058.75

To this amount was added interest on the amount found due February 14, 1902, to June 30, 1902, making the amount for which judgment was rendered $71,326.37.

Gustavus A. Koerner, B. H. Canby, and Victor Koerner, for plaintiff in error.

Dill & Wilderman for defendant in error.

Per Curiam: It is first conceded that the judgment exceeds the *ad damnum* of the pleas upon which judgment was rendered in favor of the defendant in error. The attention of the trial court was not challenged, by exception or otherwise, to the fact that the amount found by the referee to be due the defendant in error, and for which amount he recommened that defendant in error have judgment, exceeded the amount of the *ad damnum* of the pleas. Had the court's attention been called to that fact the pleas could readily have been amended and the error avoided. In Butler *v.* Cornell, 148 Ill. 276, it is said that an objection to the report of a referee, not made in the trial court by exception, which might have been obviated by amendment, will not be considered on appeal or writ of error. In Metropolitan Accident Ass. *v.* Froiland, 161 Ill. 30, Prairie State Loan and Building Ass. *v.* Gorrie, 167 *id.* 414, and Wheatley, Buck & Co. *v.* Chicago Trust and Savings Bank, *id.* 480, it was held that an objection that the judgment exceeds the amount of the *ad damnum* of the declaration cannot be raised for the first time on appeal. In Wheatley, Buck & Co. *v.* Chicago Trust & Savings Bank, *supra,* the

point was made that the judgment exceeded the *ad damnum* laid in the declaration. The court, on page 484, said: "This, indeed, was error. But the error can not now be taken advantage of. The objection must be considered as waived by reason of its not having been made in the trial court. Had that court's attention been called to the matter the objection could readily have been obviated. (Metropolitan Accident Ass. *v.* Froiland, 161 Ill. 30; Utter *v.* Jaffray, 114 *id.* 470.) Counsel, on the contrary, made no mention of the error in either the motion for a new trial or the motion in arrest of judgment." By reason of the failure of the plaintiff in error to raise the question in the trial court, the objection was waived and cannot now be taken advantage of in this court.

It is next contended that the pleas of set-off presented no defense to the action and that the court had no jurisdiction to entertain them, and it is urged that the court, by rendering judgment thereon in favor of the defendant in error, violated section 1 of article 4 of the constitution of the United States, which provides "full faith and credit shall be given, in each State, to the public acts, records and judicial proceedings of every other State," as it is said a set-off against a judgment is not permitted by the laws of the State of Missouri. The validity of the judgments rendered in favor of plaintiff in error by the Missouri court, and upon which suit was brought, was not attacked, but full faith and credit were given thereto. Under the statute of the State, (Hurd's Stat. 1903, chap. 110, sec. 19,) demands upon simple contracts may be set off against demands upon judgments, which statute includes a judgment rendered by a court of the State of Missouri as well as a judgment rendered by a court in this State. It has uniformly been held that each of the States of the Union may pass a law limiting the time within which an action may be brought in said State upon a judgment rendered in a court of another State, without thereby depriving the judgment of the full faith and credit which it is entitled to under the constitution of the United States. This holding is based upon the ground that a statute of limitations affects only the remedy, and that a limitation law is a law of the forum, and must control. (Metcalf *v.* City of Watertown, 153 U. S., 671.) It is also held that a plea of set-off is a plea to the remedy. (Mineral Point Railroad Co. *v.* Barron, 83 Ill. 365; Davis *v.* Morton, 5 Bush. 160; 96 Am. Dec. 345; Second National Bank of Cincinnati *v.* Hemingray, 31 Ohio St. 168.) That being true, the statute of the State wherein the action is brought controls as to what character of set-off, if any, may be pleaded. When, therefore, suit is brought upon a judgment of another State in the courts of this State, as the statute of this State permits demands upon simple contracts to be off-set against judgments, the statute of this State will control. Furthermore, the statute of the State of Missouri upon the subject of set-off was not in evidence, and the courts of this State without proof will not take judicial notice thereof. In Chicago and Alton Railroad Co. *v.* Wiggins Ferry Co., 119 U. S. 615, it was said: "Whenever it becomes necessary, under this requirement of the constitution (art. 4, sec. 1,) for a court of one State, in order to give faith and credit to a public act of another State, to ascertain

what effect it has in that State, the law of that State must be proved as a fact. No court of a State is charged with knowledge of the laws of another State, but such laws are in that court matters of fact, which, like other facts, must be proved before they can be acted upon. This court, and the other courts of the United States, when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States; but in this court, when acting under its appellate jurisdiction, whatever was matter of fact in the court whose judgment or decree is under review is matter of fact here. This was expressly decided in Hanley *v.* Donoghue, 116 U. S. 1, in respect to the faith and credit to be given by the courts of one State to the judgments of another State, and it is equally applicable to the faith and credit due in one State to the public acts of another."

A third ground of reversal urged is, that the liability of plaintiff in error to pay the defendant in error the debt due him by the Belleville and St. Louis Railway Company was determined in favor of plaintiff in error in the suit brought by said company, for the use of defendant in error, against plaintiff in error, in the circuit court of St. Clair county, and removed by the latter to the United States Circuit Court and judgment there rendered in his favor, which judgment was affirmed by the Circuit Court of Appeals, and therefore that question is in this suit *res judicata*. The exception to the referee's report which is claimed to raise this question is the fifth, as follows: "The referee failed to find that the claim made that Leathe absolutely promised to pay the debts of the Belleville and St. Louis Railway Company had been adjudicated in favor of said Leathe and against said Thomas, as shown by the evidence." The only error assigned in the Apellate Court which can be said to present for decision the ruling of the court on that exception is the general assignment of error: "The court erred in overruling exceptions of appellant to the report of the referee."

While the exception and assignment of error are entirely too general to properly raise the question of former adjudication insisted upon in the argument if the objection had been aptly made, the Appellate Court considered and decided that question. In the original argument in this court, the defendant in error did not urge the point, and in passing upon the foregoing alleged error we reached the conclusion that, as applied to the third and fourth pleas, the circuit court erred in overruling the exception, and the argument on that branch of the case being mainly directed to those pleas, we reversed the judgments of the circuit and Appellate Courts, and remanded the cause, inadvertently overlooking the issues made on the first and second pleas. As already shown the first plea was the common counts in assumpsit, and the second was a special plea or count setting up facts showing that the plaintiff below was indebted to the defendant upon a certain contract between them and other parties which had no relevancy whatever to the alleged promise of the plaintiff to pay the debts of the Belleville and St. Louis Railway Company. The agreement set up in the second count bears date January 24, 1893, and was executed by Edward L. Thomas, Samuel

H. Leathe, Bart S. Adams and Lucien N. Chipley, by which the other parties agreed to transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien N. Chipley $78,300 of said stock, they to furnish funds to carry on the construction of the railway and to negotiate and sell $500,000 of five per cent. bonds of said company. The plea then shows that in pursuance of and in carrying out the objects and purposes of that agreement certain things were done by the parties and by said railway company, and concludes with the averment that the plaintiff sold said bonds in said contract mentioned for the sum of $500,000, which said sum he then and there received; that the plaintiff expended in building said railway under said contract the sum of $300,000; that there was, at the time of making said contract, due defendant a large sum of money, to-wit, the sum of $65,000, which was to be paid said defendant as in said contract specified; that said plaintiff, after receiving said sum so expended by him under said contract and agreement, had remaining in his hands, and still has, as the proceeds of the sale of said bonds, a large sum of money, to-wit, $200,000, out of which, by the terms of said contract, said sum so due said defendant, as aforesaid, was due and payable, by means whereof plaintiff became liable to pay to said defendant said sum of $65,000, which said sum of money so due from the plaintiff to the defendant, as aforesaid, exceeds the damages sustained by the plaintiff by reason of the non-payment by the defendant of the said several judgments in said declaration mentioned, and out of which said sum of money the defendant is ready and willing, and hereby offers, to set off and allow to the plaintiff, etc.

The sufficiency of this and the preceding plea is in no way questioned as presenting subsisting causes of action, and it is not denied that a general judgment on the whole evidence is unaffected by the failure to sustain any other count. Our Practice act expressly provides that no judgment shall be reversed on the ground of a defective count if there remains a sufficient one to sustain the verdict, and it would seem to follow that no judgment should be reversed for a failure to prove one or more causes of action where others have been proven. The findings of the circuit and Appellate Courts are conclusive in this case that the evidence sustained the first and second counts of the declaration. In fact, it is not claimed that there was an absence of evidence fairly tending to prove the allegations of the first and second pleas.

We have held that the finding of the referee is entitled to the same weight and credit as the verdict of a jury, and that the judgment of the Appellate Court, on appeal from that of the trial court, on his finding is final as to the questions of fact. (Story *v.* De Armond, 179 Ill. 510; Butler *v.* Cornell, 148 *id.* 276.) We have carefully examined the exceptions filed to the referee's report, and find no one of them which can be applied to the issues under the first and second pleas.

It is insisted on behalf of plaintiff in error that these issues were ignored upon the trial; that the real question decided arose on the third and fourth pleas, and that the referee based his conclusions upon the findings of fact; that the plaintiff in error agreed, as a

consideration for the conveyance to him, to pay the debts of the railway company. There is a volume of evidence in the record, not abstracted, on the issues made on the second plea. There is also sufficient testimony shown by the record and abstract to authorize a recovery under the first plea, independent of the judgment of December 21, 1893. The finding of the referee is not based on any particular plea. That finding, and the judgment thereon, are as well supported by the first as by either the third or fourth plea. While the referee made the judgment for $53,022.23 in favor of the defendant the basis of his finding as to the amount due him, that fact does not prove that such judgment was the only evidence in the record upon which it could have been based. We have no means of determining on this record that the first and second pleas were not treated as presenting substantial issues in the case. The judgment of the Circuit Court of the United States affirmed by the Circuit Court of Appeals, cannot affect the right of recovery under the first and second pleas, and evidently counsel for plaintiff in error so understood, the replication being general as to them, and the prior adjudication only applied to the third and fourth pleas by replication. We think, therefore, that the judgment of the Appellate Court must be affirmed without reference to the third and fourth. In fact, counsel for plaintiff in error virtually concede that the cause of action set up in the second count is not barred by any former adjudication. They say: "It may be that Thomas has a right to an accounting under the contract of January 24, 1893, set up by him in his second plea of set-off. So far as the opinion of this court may be construed to deprive Thomas of this right we concede the opinion should be modified."

The question of damages is one of fact to be determined from the evidence, not reviewable in this court.

Our conclusion is that the judgment of the Appellate Court must be affirmed.

Judgment affirmed.

* * * * * * *

ERRORS ASSIGNED IN SUPREME COURT OF THE UNITED STATES.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Assignment of Errors.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the said Supreme Court of Illinois in the above entitled cause there is manifest error in this, to-wit:

1. Said Supreme Court of Illinois erred in affirming the judgment of the Appellate Court for the Fourth District of Illinois entered in the above entitled cause on June 15, 1903.

2. Said Supreme Court of Illinois erred in not reversing the said judgment of said Appellate Court.

3. Said Supreme Court of Illinois erred in not holding that the pleas of set-off presented no defense to the action of plaintiff in error and that the court had no jurisdiction to entertain them; and in holding that demands upon simple contracts might be set-off by the defendant in error in this suit against the demand of the plaintiff in error herein upon the judgments in his favor upon which this suit was brought.

4. Said Supreme Court of Illinois erred in not holding that the indebtedness of the Belleville & St. Louis Railway Company to the defendant in error could not be set-off by the defendant in error against the judgments in favor of the plaintiff in error upon which this suit was brought, and in affirming the judgment against the plaintiff in error based upon the claim of the defendant in error that the plaintiff in error had assumed and agreed to pay such indebtedness.

5. Said Supreme Court of Illinois erred in not holding that the question of the liability of plaintiff in error to pay the defendant in error the debt due him by the Belleville & St. Louis Railway Company was determined in favor of plaintiff in error in the suit brought by said company for the use of defendant in error against plaintiff in error in the Circuit Court of St. Clair County, and removed by the latter to the Circuit Court of the United States for the Southern District of Illinois, in which judgment was rendered in favor of the plaintiff in error herein, which judgment was affirmed by the Circuit Court of Appeals, and that therefore that question was in this suit *res judicata.*

6. Said Supreme Court of Illinois erred in holding that the exceptions to the referee's report and error assigned thereon were too general to properly raise the question of *res judicata.*

7. Said Supreme Court of Illinois erred in holding the judgment entered in said cause in the Circuit Court of St. Clair County was based upon the first and second pleas by the defendant in error; and in holding that the finding and judgment herein are as well supported by the first as by either the third or fourth plea; and in holding that there was sufficient testimony to authorize a recovery under the first plea independent of the judgment of December 21, 1893.

8. Said Supreme Court of Illinois erred in holding that the finding herein of the referee and the judgment based thereon could stand on the first and second pleas, and in not holding that they were based solely upon the third and fourth pleas; and in affirming the judgment of said Appellate Court therein without reference to the third or fourth pleas; and in holding that there was evidence tending to or that was sufficient to prove the first and second pleas.

9. Said Supreme Court of Illinois erred in not holding that the claim and demand of the defendant in error herein was the very same claim and demand which was adjudicated between the parties hereto in the Circuit Court of the United States for the Southern District of Illinois; and in not holding that the judgment entered in

said last mentioned cause for the plaintiff in error herein was a bar to a recovery by the defendant in error herein.

10. Said Supreme Court of Illinois erred in its judgment entered herein because the said judgment fails to accord full faith and credit to the said judgment entered in the said Circuit Court of the United States for the Southern District of Illinois.

11. Said Supreme Court of Illinois erred in its judgment entered herein because the said judgment fails to give or accord due force and effect to the said judgment entered in the said Circuit Court of the United States for the Southern District of Illinois.

12. The said judgments of the said Supreme Court of Illinois and of said Appellate Court and of said Circuit Court of St. Clair County, deprive the said plaintiff in error of the right, title and immunity secured to him by the said judgment in his favor of the said Circuit Court of the United States for the Southern District of Illinois.

13. The said last mentioned judgment of the Circuit Court of the United States for the Southern District of Illinois was *res judicata* and a bar to any recovery herein and the said Supreme Court of Illinois erred in not so holding.

14. The said judgment of said Supreme Court of Illinois was rendered against said plaintiff in error without due process of law.

VICTOR KOERNER,
JOHN MAYNARD HARLAN,
JAMES S. HARLAN,
Attorneys for Plaintiff in Error.

Filed March 29, 1906.
C. MAMER,
Clerk of Supreme Court.

ADDITIONAL ERRORS ASSIGNED IN SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

SAMUEL H. LEATHE, Plaintiff in Error,
vs.
EDWARD L. THOMAS, Defendant in Error.

Additional Assignment of Error.

Now comes the plaintiff in error and, by leave of court first had and obtained, respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Illinois in the above entitled cause there is also manifest error in this, to-wit:

15. Said Supreme Court of Illinois erred in holding that the fifth exception to the referee's report, which was as follows: "The referee

failed to find that the claim made that Leathe absolutely promised to pay the debts of the Belleville & St. Louis Railway Company had been adjudicated in favor of said Leathe and against said Thomas as shown by the evidence;" and the error assigned thereon in said Appellate Court in language as follows: "The Court erred in overruling exceptions of appellant to the report of the referee," are entirely too general to properly raise the question of former adjudication.

VICTOR KOERNER,
JOHN MAYNARD HARLAN,
JAMES S. HARLAN,
Counsel for Plaintiff in Error.

(Endorsed:) Supreme Court United States. Samuel H. Leathe, plaintiff in error, *vs.* Edward L. Thomas, defendant in error. Additional Assignment of Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 21

Office Supreme Court U. S.
FILED
APR 19 1906
JAMES H. McKENNEY,
Clerk.

SAMUEL H. LEATHE, PLAINTIFF IN ERROR,

vs.

EDWARD L. THOMAS, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS THE WRIT OF ERROR OR TO AFFIRM THE JUDGMENT OF THE COURT BELOW, TOGETHER WITH THE STATEMENT OF THE CASE AND THE BRIEF AND ARGUMENT OF DEFENDANT IN ERROR ON SAID MOTION.

EDWARD L. THOMAS,
Defendant in Error, Pro Se.

ADDRESS, BELLEVILLE, ILLINOIS.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 21599

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 670.

SAMUEL H. LEATHE, PLAINTIFF IN ERROR,

vs.

EDWARD L. THOMAS, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF ILLINOIS.

Motion to Dismiss Writ of Error or to Affirm the Judgment of the Court Below.

Now comes the above-named Edward L. Thomas, defendant in error herein, in his own proper person, and moves the court on the record herein:

1st. To dismiss the writ of error herein for want of jurisdiction in this court.

2d. To affirm the judgment of the supreme court of the State of Illinois, the review of which judgment is sought by the writ of error herein, upon the ground that the rulings,

decision, and judgment of the said supreme court of Illinois are obviously correct, and upon the further ground that even if the record shows jurisdiction in this court, it is manifest that the writ of error herein was taken for delay only, and that the questions upon which jurisdiction depends are so frivolous as not to need further argument.

3d. For interest and damages, as provided by Rule No. 23 of this court, together with costs and disbursements.

Respectfully submitted.

EDWARD L. THOMAS,
Defendant in Error, Pro Se.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1905.

No. 670.

SAMUEL H. LEATHE, *Plaintiff in Error,*
vs.
EDWARD L. THOMAS, *Defendant in Error.*

ERROR TO THE SUPREME COURT OF ILLINOIS.

SIR: Please take notice that the defendant in error in the above-entitled cause will, on the 14th day of May, 1906, at 12 o'clock noon on said day, at the opening of said court or as soon thereafter as he can be heard, at the Supreme Court room, in the city of Washington, District of Columbia, in open court, move this court on the record herein:

1st. To dismiss the writ of error herein for want of jurisdiction in this court.

2d. To affirm the judgment of the supreme court of Illinois, the review of which judgment is sought by the writ of error herein, upon the ground that the rulings, decision, and judgment of the said supreme court of Illinois are obviously

correct, and upon the further ground that even if the record shows jurisdiction in this court it is manifest that the writ of error herein was taken for delay only, and that the questions upon which jurisdiction depends are so frivolous as not to need further argument.

3d. For interest and damages, as provided for by Rule 23 of this court, together with costs and disbursements.

Together with this motion the defendant in error serves upon the plaintiff in error a copy of his brief and argument and a brief statement of the facts upon this motion.

Dated Washington, D. C., April 19, 1906.

EDWARD L. THOMAS, *Pro Se.*

P. O. address, Belleville, Illinois.

To VICTOR KOERNER, *Of Counsel for Plaintiff in Error, (Address) Arcade Building, East St. Louis, Illinois.*

To JOHN M. HARLAN, *Of Counsel for Plaintiff in Error, (Address) Marquette Building, Chicago, Illinois.*

To JAMES S. HARLAN, *Of Counsel for Plaintiff in Error, Marquette Building, Chicago, Illinois.*

STATEMENT.

This is an action of debt brought by plaintiff in error against defendant in error in the circuit court of St. Clair county, Illinois, upon judgments recovered by plaintiff in error against defendant in error in the circuit court of St. Louis, Missouri, which judgments aggregated $3,202.38.

The defendant in error did not contest the validity of the judgments and filed no pleas except pleas of set-off.

The first plea of set-off was upon the general counts for money due and unpaid, interest, and money due on account stated.

To this general plea of set-off the plaintiff in error filed a similiter.

The second plea of set-off set up the following state of facts:

The defendant in error, in connection with one William A. Adams, was engaged in constructing a railroad between Belleville and East St. Louis, the corporate name of which was the Belleville and St. Louis Railway Company. Adams died in 1891, at which time it was claimed he had invested in the enterprise $23,000 and the defendant in error $50,000. The defendant in error, upon the death of Adams, applied to the plaintiff in error for financial assistance to complete the road. After some preliminary negotiations, on January 24, 1893, an agreement in writing was entered into between the plaintiff in error, the defendant in error, Bart S. Adams, a son of William A. Adams and the representative of the Adams estate, and Lucien M. Chipley, who had become interested in the construction of the road; which agreement was as follows:

"St. Louis, *January* 24, 1893.

"It is agreed that we will transfer to Samuel H. Leathe, $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley, $78,300 of said

stock, said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000.00 five per cent. bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and note in Third national bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams, $50,000 and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

"Dated January 24, 1893.

"EDWARD L. THOMAS.
"BART S. ADAMS.
"SAMUEL H. LEATHE.
"LUCIEN M. CHIPLEY."

"In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the statements made in my letter of January 12, 1893, and as security to hold until all matters are fully arranged and paid for which I am responsible as per said letter and statement rendered.

"EDWARD L. THOMAS."

That plaintiff in error had sold the bonds mentioned in the instrument above set forth for $500,000; that he expended in building the road $300,000, and that he had in his hands $200,000; that the amount due defendant in error was $65,000, which was before then known to plaintiff in error, and that in consideration of the premises plaintiff in error became liable to pay amount due defendant in error.

To this there was a general replication, and a special replication, setting up that by the statutes of Missouri no set-off could be allowed against judgments recovered in that State.

A general rejoinder was filed to this special replication.

The third plea of defendant in error set up that a sale of the property of the Belleville and St. Louis Railroad Company had been made to plaintiff in error, and that a deed was executed, the consideration of which was that plaintiff in error was to pay the debts of the company, of which one was the debt due to the defendant in error, of which plaintiff in error had notice; that defendant in error sued the railroad company, which notified plaintiff in error, who defended the suit—filed a bill in chancery to enjoin the further prosecution of the suit; and that upon a final hearing the bill was dismissed for want of equity, and a judgment rendered against the railroad company in favor of defendant in error for $53,022.23; and that these two cases were *res adjudicata* of the promise of plaintiff in error to pay the debt due defendant in error as the consideration for deed of the railroad company. The plea concluded by offering to prove the same by the record, &c.

To this plea plaintiff in error filed a general replication and two special replications, one setting up the statute of Missouri as to the second plea, and a further replication that defendant in error had brought suit against plaintiff in error on said judgment and decree, which was removed to the circuit court of the United States for the southern district of Illinois, where on a trial judgment was given for plaintiff in error, which judgment was affirmed in the court of appeals for the seventh district, whereby it was adjudicated that plaintiff in error did not promise, in consideration of the railroad deed to him, to pay the debt of said company to said defendant in error.

To these replications a general rejoinder was filed.

The fourth plea of set-off was similar to the third, except that it relied on the original promise instead of alleging, as the third plea did, an adjudication on that promise.

Replications and rejoinders thereto were the same as to the third plea above set forth.

The cause was by consent referred to a referee.

The basis of computation of the referee and the amount for which he recommended judgment in favor of the defendant in error were as follows, as appears from his report:

Defendant's judgment, December 21, 1893	$53,022.23	
Interest to January 11, 1902, 8 years and 20 days, 5 per cent	21,356.17	
		$74,378.40

Deduct plaintiff's judgments:

Judgment March 5, 1896	$2,278.63	
Interest on $337.27, 8 per cent., 5 years 10 months and 6 days	157.83	
Interest on $1,941.36	681.40	
Judgment January 5, 1897	923.75	
Interest, 6 per cent., 5 years and 6 days	278.04	
		4,319.65
Balance		$70,058.75

To this amount was added interest on the amount found due February 14, 1902, to June 30, 1902, making the amount for which judgment was rendered $71,326.37.

Exceptions were filed and overruled, and appeal was taken to the appellate court of the fourth district of Illinois. There the judgment of the trial court was affirmed, petition for rehearing denied, and writ of error was taken to the supreme court of Illinois, where hearing was had, cause reversed and remanded, rehearing granted on petition of defendant in error, cause affirmed, and petition for rehearing of plaintiff in error denied, and writ of error sued out to this court, claiming the existence of two Federal questions:

1st. Upon the replication, that the statute of Missouri did not allow a plea of set-off to a judgment recovered in that State, and therefore that the courts of Illinois, by allowing pleas of set-off, failed to give full faith and credit to the Missouri judgments.

2d. That the courts of Illinois failed to give full faith and credit to the judgment of the Federal court upon the replication of former adjudication to the third and fourth pleas.

To these points all of the errors assigned on the record that are reviewable in this court are directed.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

The motion to dismiss for want of jurisdiction in this court presents two questions for consideration:

1st. Upon the claim that full faith and credit was not given to the judgments of the Missouri court by the Illinois courts because of the claim made in the replication to the special pleas that the statute of Missouri did not allow a set-off to be pleaded against a judgment, and that the allowance of that defense by the courts of Illinois was a refusal upon the part of those courts to give full faith and credit to the judgments of a sister State.

A set-off is a cross-action or in the nature of a cross-action, and if the statute of Illinois authorizes it to be pleaded, it is governed by the same principles as would govern an original action for the same cause.

7 Wait's Actions and Defenses, p. 473.
Am. & Eng. Encyc. of Law, vol. 22, p. 211.
Annan vs. Houck, 4 Gill. (Mo.), 325 (45 Am. Dec., 133).

Set-off is a mode of defense whereby the defendant acknowledges the justice of the plaintiff's demand on the one hand, but on the other sets up a demand of his own to counterbalance it, either in whole or in part.

22 Am. & Eng. Encyc. of Law, pp. 211, 212, 227.
7 Wait's Actions and Defenses, p. 473.

In the absence of statutory provisions requiring him to do so, a defendant who has a demand against a plaintiff capable of being set off against the plaintiff's demand may interpose it or not, as he may elect.

Encyc. Pleading & Practice, vol. 19, pp. 731-733.
Quick vs. Lemon, 105 Ill., 578.
Morton vs. Bailey, 1 Scam., 213.
McDole vs. McDole, 106 Ill., 459.

An action, so far as the remedy is concerned, is always governed by the law of the State where it is brought, even if the action is brought on a judgment of a State other than of the State in which the action is brought.

McElmoyle vs. Cohen, 13 Pet. U. S. R., 312.
Bacon vs. Howard, 20 How. U. S. R., 22.

Set-off is in its nature a defense arising *ex post facto* and pertains to the remedy rather than to the cause of the plaintiff's action, which it admits, and it is a mere regulation of procedure, and therefore subject to the laws of the State where the plaintiff brings his action and not to the laws of the State where the plaintiff's cause of action arose.

Story on Conflict of Laws (8th ed.), secs. 575, 582*a*.
Am. & Eng. Encyc. of Law, vol. 22, pp. 238–239.
Mineral Point R. R. Co. vs. Barron, 83 Ill., 365.
Davis vs. Morton, 5 Bush. (Ky.), 160 (96 Am. Dec., 345).
Savery vs. Savery, 3 Clark's (Iowa) R., 271.

The full faith and credit which the Constitution of the United States requires shall be given in every State of the Union to the judgments of the other States consists in simply denying to persons against whom they were rendered the right to plead or interpose as a defense, when they are sued on them in the courts of a State other than that in which they were rendered, any matter which was determined by it, or which involves a re-examination of the merits involved in the actions in which they were rendered, or which draws in question any fact or right or liability determined by them, or which seeks to impeach them for fraud, but such judgments under the constitutional provision differ from a foreign judgment in no other respect.

Hanley vs. Donoghue, 116 U. S. R., 1.
Reinnard vs. Abbott, 116 U. S. R., 277.
McElmoyle vs. Cohen, 13 Pet. U. S. R., 312.
Ambler vs. Whipple, 139 Ill., 322.
Story on Conflict of Laws (8th ed.), sec. 609 and notes.

But the right to interpose to an action on a judgment in the courts of a State other than that in which such judgment was rendered any defense which legally admits the force and validity of such judgment in no way denies the full faith and credit due to such judgment; hence the defendant has the right, when sued on such a judgment in the courts of a State other than the one in which it was rendered, to plead to the action that the plaintiff has released such judgment, or that the defendant has paid it, or that it is presumed to be paid by the common-law presumption arising from the lapse of time, or that the action on such judgment is barred by the statute of limitations of the State in which the action on such judgment is brought, or, if the statutes of the State in which the action on such judgment is brought authorize it, he may interpose a cross-action—that the plaintiff is indebted to him in a sum of money constituting a contractual indebtedness which he offers to set off against the plaintiff's demand.

Folsom vs. Winch, 63 Iowa R., 477.
McElmoyle vs. Cohen, 13 Pet. U. S. R., 312.
Partridge vs. Ins. Co., 15 Wall., 579, 580.

By the statute of Illinois it is provided that "demands upon simple contracts may be set off against demands upon sealed instruments, judgments, or decrees."

Starr & Curtiss' Ill. Stats., chap. 110, sec. 19.

Where the defendant pleads to an action on such a judgment a set-off and no other plea, as was done in this case, he thereby admits the validity of the judgment sued on; hence the faith and credit of the judgment sued on is in no way impeached or drawn in question.

Folsom vs. Winch, 63 Iowa, 477.
Ansley vs. Bank of Piedmont, 113 Ala., 467 (59 Am. St. R., 122).
Gregory vs. Trainor, 4 E. D. Smith (N. Y.), 58

In actions on judgments of sister States the court in which such action is brought will presume that the court which rendered such judgment had jurisdiction of the parties and the cause, and that the judgment is valid.

Rae vs. Hurlbert, 17 Ill.
Horton vs. Critchfield, 18 Ill., 133.
Hanley vs. Donoghue, 116 U. S. R., 5.
Knowles vs. Gaslight Co., 19 Wall., 58.
Settlemeier vs. Sullivan, 97 U. S. R., 444.

But while such presumptions prevail in favor of the validity of those judgments, neither the courts of this State nor the courts of the United States take judicial notice of the statutes of the State in which such judgments were rendered.

Horton vs. Critchfield, 18 Ill. R., 133.
Hanley vs. Donoghue, 116 U. S. R., 4–5.
C. & A. R. R. Co. vs. Wiggins Ferry Co., 119 U. S. R., 615.
Bonnell vs. Holt, 89 Ill., 72.
Tinkler vs. Cox, 68 Ill., 119.

It thus results that as the statutes of Missouri were not proven before the trial court and, per consequence, are not before this court, we cannot know whether a set-off might have been pleaded in the courts of that State to actions on these judgments or not.

There can be no question upon this record but that full faith and *credit* was given to the judgments sued upon, because they were deducted from the amount found due the defendant in error, by the referee.

With this fact established, it is clear that the claim made is without foundation in fact or in law, and as to this contention this court is without jurisdiction.

The second question presented by the assignment of errors arises upon the claim that the supreme court of Illinois did not give full faith and credit to the judgment of the Federal court set up in the second replication to the third and fourth pleas, claiming *res adjudicata* of the matters set out in those pleas.

Is this contention borne out by the record?

This court will take notice of the finding of fact and follow the legal conclusions of the court below and is bound by them, since they involve but a construction by the court of last resort of the State of Illinois of the statutes of that State regulating procedure in the courts of that State.

Nobles vs. Georgia, 168 U. S., 398-405.

Egan vs. Hart, 165 U. S., 188, referring to *Eustis vs. Bolles*, 150 U. S., 361, and numerous cases.

Before this court can take jurisdiction upon a Federal question, four things must concur:

1st. There must be a Federal question presented by the record.

2d. The determination of that Federal question in the court below must have been necessary to the proper determination of the cause.

3d. The decision of the Federal question by the lower court must have been adverse to the plaintiff in error.

4th. There must be no other grounds outside of the Federal question upon which the judgment of the lower court was predicated or might stand.

These four propositions are upheld by numerous decisions of this court, only a few of which are here cited.

New Orleans vs. La., 185 U. S., 344-351.
Gableman vs. Peoria, 179 U. S., 339.
New Orleans vs. Benjamin, 153 U. S., 411.
Swafford vs. Templeton, 185 U. S., 493.
Iowa vs. Rood, 187 U. S., 87.
Sweringen vs. St. Louis, 185 U. S., 45.
Hale vs. Lewis, 181 U. S., 479.

The leading case of *Eustis vs. Bolles*, opinion by Mr. Justice Shiras), 150 U. S., 361-370, is similar in its legal features to the case at bar, and upon the propositions advanced above is conclusive.

The learned judge refers in that case to a number of former decisions of this court supporting his conclusions, and that case has been so often approved by this court in subsequent cases that it is unnecessary to cite other authorities, as the propositions advanced have become "settled law" in this court.

It was also held in that case that the proper and logical action for the court was to *dismiss* the writ of error instead of *affirming* the case.

Apply these well-established propositions to the facts of the case at bar:

1st. The court below did decide the Federal question presented.

2d. The court decided the Federal question in *favor of the plaintiff in error*, holding, as he contended in the replications to the third and fourth pleas, that the questions presented by those pleas had been adversely determined by the Federal court to the defendant in error, and that the replication of former adjudication was proven. *There was then no adverse decision* to the contention of plaintiff in error in the court below. (See opinion of Illinois supreme Court, Record, pp. 1315, 1321.)

3d. The judgment of the lower court was not founded upon its decision of the Federal question, but was rendered notwithstanding the fact that the court held as contended for by plaintiff in error upon the Federal question—upon questions of general law which are not subject to review by this court. (See authorities cited *supra*.)

The supreme court of Illinois says that it inadvertently overlooked the general plea of set-off and the first special plea of set-off when it rendered its first opinion, and has rendered its judgment upon a statute of Illinois quoted by it in its opinion, which by its terms required the judgment rendered, and which, being a matter solely within the province of that court to construe and determine, will not be reviewed by this court. (See authorities cited *supra*.)

The conclusion is inevitable, from the facts presented by this record and from the authorities cited, that no Federal question is presented, and that this court has no jurisdiction of the cause.

It is not desired to take up the time of the court by presenting a brief and argument upon that part of the motion asking for an affirmance of the judgment below, in case the court should hold it had color of jurisdiction. Suffice it to say upon that part of the motion that the argument against jurisdiction and the authorities cited are sufficient to warrant the court in affirming the cause in case it should not dismiss for want of jurisdiction, as in the authorities cited and the position taken by this court in those cases the two questions are so blended that it would be but repetition to refer again to those cases, as under them upon this record it would seem that this court would either dismiss this writ or affirm the judgment of the court below.

Upon the question of damages and interest it might be said that this record discloses the most skillful processes of delay that are known to the law.

This action, commenced in 1897, has been continued by appeals and writs of error, all upon the part of plaintiff in error, for over eight years, and this last writ was obtained with the evident intention of prolonging this delay and putting off to the last possible moment the payment of a just claim.

This cause calls for the application of Rule 23.

Respectfully submitted.

EDWARD L. THOMAS, *Pro Se.*

[redacted]

IN THE

Supreme Court of the United States.

[redacted]

[redacted] 21

No. [redacted]

In error to the [redacted]

REPLY OF PLAINTIFF IN ERROR TO MOTION TO DISMISS OR AFFIRM.

JAMES S. HARLAN,
JOHN MAYNARD HARLAN,
VICTOR KOERNER,
Attorneys for Plaintiff in Error.

[redacted]

IN THE

Supreme Court of the United States.

OCTOBER TERM. 1905.

SAMUEL H. LEATHE, *Plaintiff in Error,* *vs.* **EDWARD L. THOMAS,** *Defendant in Error.*	No. 670.

In error to the Supreme Court of the State of Illinois.

REPLY OF PLAINTIFF IN ERROR TO MOTION TO DISMISS OR AFFIRM.

The Supreme Court of Illinois first decided this case unanimously for the plaintiff in error. Subsequently upon re-argument on a petition for rehearing it was decided in favor of the defendant in error. But this final decision was not unanimous. Two of the ablest members of the court, one of them the Chief Justice, strongly dissented from the opinion of the majority. It is manifest therefore that the lower court had difficulty in arriving at its final conclusion and that the questions involved gave rise to grave doubts in that court.

Notwithstanding this fact, learned counsel for the defendant in error concludes his argument in support of his motion to dismiss or affirm with the assertion that the act of the plaintiff in error in bringing the record to this court for review is one of oppression, the "evident intention" of which was to put "off to the last possible moment the payment of a just claim" (p. 16); and that in the effort to postpone such payment the plaintiff in error has resorted to the "most skillful processes of delay that are known to the law" (p. 15).

We shall not stop at this time to respond to this reflection upon the motives of the plaintiff in error. A statement of the case will suffice to put this court in full possession of all its various phases.

I.

The judgment of the Supreme Court of Illinois was entered on June 23, 1905. (Rec., 1308.) It affirmed a judgment entered on June 15, 1903, (Rec., 1266) in the Appellate Court for the Fourth District of Illinois, which latter judgment itself affirmed a judgment for $71,226.37 entered against the plaintiff in error on June 30, 1902 (Rec., 51-52), in the Circuit Court of the County of St. Clair in the State of Illinois in favor of Edward L. Thomas.

Thomas was the defendant below and Leathe the plaintiff. Thomas admitted the claim upon which the plaintiff sued, but he set up a counter-claim against the plaintiff. The judgment in his favor was upon a plea of set-off, as hereinafter more fully explained.

The plaintiff in error insisted below, as he does here, that the claim or subject matter upon which the judgment against him was rendered in favor of Thomas was the very same claim or demand upon which an action had theretofore been brought against him by Thomas in the Circuit Court of St. Clair County, Illinois. From the latter court this prior action had been removed to the Circuit Court of the United States for the Southern District of Illinois, where a judgment was rendered in favor of Leathe, the defendant in that action and the plaintiff in error on this record. That federal judgment in his favor was specially set up in this proceeding as a bar to the demand of the defendant in error. The plaintiff in error claimed that the judgment of the federal court in his favor disposed of that claim or demand and gave him immunity from further prosecution upon it. The effective result of the judgment of the lower court was to totally disregard the federal judgment.

This failure of the supreme court of the state and of the appellate and circuit courts of the state to accord full faith and credit and to give full force and effect to the judgment of the federal court between the same parties and on the same demand constitutes one of the federal questions involved upon this record. It is also insisted that the judgment below was entered against the plaintiff in error without due process of law. These questions require a reference to the four pleas of set-off filed by Thomas. They are the only questions which we propose to discuss at this time and in connection with this motion.

II.

The first plea of set-off was for the common counts for money had and received, for interest on sums foreborne, and for money due on an account stated. (Rec., 10.)

The second plea of set-off (Rec., 19) counts on a document bearing date January 24, 1893, and signed, among others, by Leathe and Thomas. It is set forth incorrectly on the short record accompanying this motion and is therefore repeated here as follows:

It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley $78,300 of said stock, said Samuel H. Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 five per cent bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams, $50,000, and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

Dated January 24, 1893.

EDWARD L. THOMAS,
BART S. ADAMS,
SAMUEL H. LEATHE,
LUCIEN M. CHIPLEY.

In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the statements made in my letter of January 12, 1893, and as security, to hold until all matters are fully arranged and paid for which I am responsible, as per said letter and statement rendered.

EDWARD L. THOMAS.

After setting forth the contract the plea avers that Leathe afterwards sold the $500,000 of bonds; and that he expended $300,000 in building the railway, leaving $200,000 in his hands out of the proceeds of the bonds, with which he was able to pay the $65,000 claimed by Thomas as due him under the contract.

Although the whole question now under discussion turns upon the third and fourth pleas of set-off and cannot be understood without them, learned counsel for reasons not disclosed has omitted any reference to them on the short record accompanying his motion. In substance they are as follows:

The third plea of set-off (Rec., 26) is based on the document of March 25, 1893, by which the assets of the Belleville & St. Louis Railway Company were conveyed over to Leathe for $1 and "other valuable considerations to it from him moving," which other valuable considerations, as was averred in this plea, included the alleged promise of Leathe to pay Thomas the debt due him from the railroad company. It is further alleged in this plea that for this amount so due him Thomas had brought suit against said company at the September term of the St. Clair County Circuit Court and had recovered a judgment against it for $53,022.23, which Leathe under said contract of March 25 had agreed and undertaken to pay.

The fourth plea of set-off (Rec., 30) also counts on the document of March 25, 1893. The allegation is that Leathe was "and is still indebted to him (Thomas) in a large sum, to-wit, the sum of $65,000, *upon a contract theretofore entered into by said plaintiff and the Belle-*

ville & St. Louis Railway Company for the benefit of the defendant.'' The deed to Leathe of March 25 is then set out in full. The plea then proceeds to aver that the deed was accepted by Leathe; that the property described in it was of the value of $100,000; that the company was indebted to the extent of $90,000, of which $65,000 was owing to Thomas; of which facts Leathe had full notice; that the consideration moving from Leathe for the deed was Leathe's promise and agreement with the company to pay its debts within a reasonable time, including the debt of Thomas; and that by reason thereof Leathe became liable to pay the debt due Thomas.

The document of March 25, 1893, is as follows:

The grantor, The Belleville and St. Louis Railway Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described lands, situated in the County of St. Clair and State of Illinois; All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed, dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof; also all the rights of way, easements, grading and superstructure thereon, acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the said Leathe, that it will, upon demand, convey, by good and proper deed of conveyance, to said Leathe and his assigns, any land, easements and rights of way, privileges or immunities, it may hereafter acquire.'

Dated this 25th day of March, A. D. 1893.

THE BELLEVILLE AND ST. LOUIS RAILWAY CO.,
By EDWARD L. THOMAS,
(SEAL.) *President.*
Attest: Henry M. Needles, Secretary.

We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS, Proxy.

III.

There is a marked difference—and one which it is important to understand—between the document of January 24, on which the second plea is based, and the contract or deed of March 25 on which the third and fourth pleas are based, to which the attention of the court may well be called at this time:

First, as to the document of January 24: It will be observed that there is in this alleged agreement no personal obligation whatever on the part of Leathe except to put up the funds required to complete the railway enterprise and to negotiate and sell $500,000 of its bonds. The document is followed by the signatures of all the parties interested. **But it contains no personal obligation on the part of Leathe to pay Thomas anything.** It is simply an agreement *by all the parties to it* with each other that out of the proceeds of the bonds they are each to be repaid the several amounts of their advancements. But it expressly provides that the advancements of Leathe shall be repaid before any payment is made to the others. Before Thomas or any of his colleagues could establish their right to any

part of the proceeds of the bonds, it was necessary not only that Leathe should first be paid his advancements, but that the amount of his advancements should be ascertained and agreed upon. The amount to be paid to Thomas was to be adjusted "as per statement rendered."

The document of March 25 was of a different character altogether. It does not bear the signature of Leathe. Nor does it contain any affirmative undertakings on his part of any kind. The history and purpose of this document may be told in a few words:

There existed at that time an old legislative charter to the "Belleville City Railway Company," which was supposed to contain some special features of value. (Rec., 73.) Thomas and his brother had persuaded Leathe that it would be well to abandon the statutory charter issued to the Belleville & St. Louis Railway Company and to operate under this old legislative charter. It is agreed on all hands that the suggestion of the conveyance of the assets of the Belleville & St. Louis Railway Company to the Belleville City Railway Company through Leathe as a channel of conveyance was the suggestion of Thomas and his brother, both of whom were attorneys and both of whom recommended that course to Leathe. The brother, Charles W. Thomas, actually prepared the document of March 25, (Rec., 75) and he admits that Leathe had very little confidence in him thereafter. (Rec., 86.) The defendant in error, Edward L. Thomas, not only executed it for the railway company as its president, but he caused it to be ratified by *all* its stockholders by *himself* signing their approval to it as their proxy! (*Ante*, ...)

But Leathe, accepting their judgment and relying on their good faith, permitted the deed of March 25 to be made to him. **On the same day and at the same time and as a part of the same transaction he reconveyed the assets received under the document of March 25 to the Belleville City Railway Company.**

It will be observed that the deed is in consideration of $1 and "other valuable considerations to it from him moving." The claim of Thomas is that buried and concealed under this phrase was the promise of Leathe personally to pay Thomas the amount owing to Thomas by the Belleville & St. Louis Railway Company. **So that, although Leathe was a mere conduit for the conveyance of the assets of one railway company to another railway company, and at the instant of receiving title conveyed it away again, the result, as Thomas claims, was to fasten upon Leathe a personal obligation to pay Thomas the large claim that the latter had against the railway company.**

The two contracts so called are wholly inconsistent with one another. A suit against Leathe on the contract of January 24 would have to rest on the theory that Leathe after the repayment of his own advancements to the railway company held the balance of the *proceeds of the bonds* as a trustee to repay the advancements made to the company by the others. He could not be required to pay out *his own* money to any of them. His alleged agreement under the document of March 25 was wholly personal. It involved his own funds and had no relation to the proceeds of the bonds.

IV.

Leathe's demurrer to the four pleas of set-off interposed by the defendant in error was overruled (Rec., 40). He then filed a general replication to all the pleas. But to the third and fourth pleas of set-off he also filed a special replication (Rec., 38), setting up, as a bar to both pleas, the action against him by Thomas commenced at the April, 1894, term of the Circuit Court of St. Clair County and afterwards removed to the Circuit Court of the United States for the Southern District of Illinois, where the issues were found for Leathe and judgment was entered therein for him with costs.

As will be shown hereafter, this case was tried wholly on the third and fourth pleas, both of which counted, not on the alleged agreement of January 24, 1893, but on this document of March 25, 1893, and the alleged agreement hidden in it, under the phrase "other valuable considerations," by which, as Thomas claims, Leathe agreed personally to pay Thomas the large sum of money owing him by the railway company.

These third and fourth pleas raised precisely the question tried in the prior action by Thomas against Leathe in the federal court. The action brought by Thomas in the name of the railway company for his use, was tried upon a declaration of two counts, the first count having been dismissed. The substance of these two counts (Rec., 514-516) is as follows:

> That the consideration of the deed of March 25, 1893, which deed Leathe accepted, was one dollar and "other valuable considerations" moving from

> Leathe to the railway company; that the "other valuable consideration" was the promise of Leathe then made that he would satisfy and pay the indebtedness of the railway company to divers parties; that the railway company was then indebted to Thomas in the sum of $60,000, of which Leathe had full notice; that the indebtedness to Thomas was part of the indebtedness which Leathe agreed to pay as part consideration of said deed to him; that Thomas had reduced said indebtedness against said company to a judgment of $53,022.33, of which Leathe had notice; that said judgment is in full force and effect and has not been paid and that Leathe had promised to pay it for the consideration aforesaid.

The exact identity of the issues raised by that action and those presented by the third and fourth pleas on this record is therefore established and is in fact now admitted by Thomas (p. 14).

But the trial court entered judgment herein against the plaintiff in error notwithstanding the bar of the judgment of the federal court. The appellate court of the state affirmed this judgment. When it reached the supreme court of the state the judgment was first reversed and remanded in a unanimous opinion in which the court ruled that the federal judgment in favor of Leathe was a bar to this new action against him by Thomas. The court in this *first* opinion summed up its deliberations with the following concluding paragraph (Rec., 1333):

> From an examination of this record we have been forced to the conclusion that the circuit and appellate courts erred in holding that the judgment of the circuit court of the United States was not a bar to defendant in error's right of recovery in this case under the pleas of set-off filed by him, as *we think it apparent the question whether or*

> *not the plaintiff in error agreed to pay to defendant in error the debt due him by the Belleville & St. Louis Railway Company was in issue in that case and was decided therein adversely to the defendant in error,* and that that judgment was a final judgment upon the merits binding upon the defendant in error, and is *res judicata* of the question presented by said third and fourth pleas of set-off.

Upon a re-argument of the case on petition for rehearing the lower court reversed its conclusions as thus expressed. It affirmed the judgment against Leathe. Although it was first clearly of the opinion that the federal judgment was a bar to the claim of Thomas in this case, in its second or *final* opinion it disposes of the case by saying that in its *first* opinion it had "inadvertently overlooked the issues made on the first and second pleas" of set-off, and it therefore affirmed the judgment on the ground that it could be sustained under the first and second pleas. See *Leathe* v. *Thomas*, 218 Illinois, at p. 254. The court also says (p. 256):

> We have no means of determining on this record that the first and second pleas were not treated as presenting substantial issues in the case.

Learned counsel for the defendant in error is thus enabled by the lower court to claim, on his brief accompanying his motion, that (p. 15):

> The judgment of the lower court was not founded upon its decision of the federal question, but was rendered—notwithstanding the fact that the court held as contended for by plaintiff in error upon the federal question—**upon questions of general law which are not subject to review by this court.**

It is rarely proper, if ever, for members of the bar to criticise the decisions and acts of a court. But the manner in which the lower court has dealt with this case has much the appearance of being an effort to avoid the bar of the judgment in the federal court in such a way, if possible, as not to come into conflict with this court in case the record were brought here. This is no mere statement expressive of the disappointment of the plaintiff in error in the result of this very protracted litigation with Thomas. On the contrary the extraordinary character of the action of the lower court plainly appears upon the very face of the record. The lower court says (p. 255):

> The findings of the circuit and appellate courts are conclusive in this case that the evidence sustained the first and second counts of the declaration.

This is a statement which nothing upon this record can possibly justify. Any doubt that may arise in the mind of this court from the presumptions that may usually be indulged in favor of the correctness of the final conclusions of courts, will be dissipated at once, as it is earnestly believed, upon the examination of the referee's report, the reference to the testimony and to the opinion of the appellate court, which it is now proposed to make in very brief form.

V.

Under the order of reference the referee was required to report his conclusions both on the facts and on the law. In his finding of facts, after a brief statement of the relations between the parties, he refers to

the document of January 24, 1893, and says that it was not signed at the time by Leathe, though still retained in his possession. He then says (Rec., 56):

> **A few weeks later matters culminated in the agreement generally referred to as the agreement of March 26, '93.**

Leathe was claiming to be acting under the document of January 24; but the referee, after stating (Rec., 57) that the evidence does not show that he was, then finds:

> **There is a clear preponderance of the testimony to the effect that the plaintiff agreed,** as a consideration of the conveyance to him of the property and assets of the Belleville and St. Louis Railway Company, **to pay the debts of that company,** the amount of which debts the evidence shows he knew.

This agreement by Leathe to pay the debts of the company is the issue, as has been shown, only of the third and fourth pleas. It was the "other valuable consideration," as Thomas claims, **under the deed of March 25.**

Then follows a statement by the referee of the action brought by Thomas against the railway company "to establish the amount of the company's indebtedness to him," and that Mr. Leathe was notified to defend this suit if he wished to do so and that he did interpose a defense. The referee then finds that judgment was rendered in that action in favor of Thomas for $53,022.23, which is still in full force; and (Rec., 58) that this judgment "represents an indebtedness which the undersigned (**the referee**) **holds the evidence shows the plaintiff promised to pay as a part of the consideration of the deed to him of March 25, 1893.**"

Immediately following this definite and very important finding of fact is the referee's "Conclusion of Law," as follows (Rec., 58):

> The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff **for the amount of said judgment** (*i. e.*, against the railway company in favor of Thomas) and interest thereon less the amount of plaintiff's said judgments (*i. e.*, in the Missouri court) against defendant and interest thereon.

Defendant's judgment, Dec. 21st, 1893.		**$53,022.23**
Int. Jan. 11, 1902, 8 yrs. 20 days, 5%		21,356.17
		$74,378.40
Deduct plaintiff's judgments:		
Judgmt. Mar 5th, '96	$2,278.63	
Int. on 337.27 8% 5 yrs. 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgmt. Jan. 5th, '97	923.75	
Int. 6% 5 yrs. 6 days	278.04	4,319.65
		$70,058.75

> for which judgment is recommended in favor of defendant Edward L. Thomas.

Not one of the various elements necessary in order to enable Thomas to recover under the contract of January 24, is the subject of a finding by the referee or is in anywise mentioned or discussed by him. To support a judgment on that contract it was obviously necessary for Thomas to prove and the court to find:

1. That the proceeds of the sale of the bonds came into Leathe's hands and that he was therefore chargeable therewith as trustee to repay the advancements of

himself and the other parties to the contract of January 24.

2. That Leathe's own advancements had first been repaid to him as provided in that contract.

3. That there then was a sufficient balance left in his hands to satisfy the advancements of Thomas and his colleagues.

Nothing therefore can be more certain than that the referee expressly found for Thomas on the document of March 25th. He limited his findings, in other words, to the cause of action set up in the third and fourth pleas of set-off. The closest scrutiny of his findings of fact or conclusion of law cannot discover that any other thought was in the mind of the referee.

The exceptions of Leathe to his report were overruled by the referee. One of those exceptions was *that he had failed to find* that the relations between the parties were controlled by the contract of January 24 (Rec., 60); and all of them are directed against the referee's finding that a new promise was made on March 25 "superseding the contract of January 24th." (Ex. No. 4; Rec., 61.) They were renewed in the trial court and were again overruled. The report was thereupon approved and judgment rendered thereon in favor of Thomas and against Leathe for $71,226.37, being the amount for which the referee recommended judgment with interest from the date of filing his report, February 13, 1902, to the date on which judgment was entered on June 30, 1902. (Rec., 51.)

The report definitely shows that Thomas was before the referee claiming under the contract of March 25,

and that the referee found on the "clear preponderance of the testimony" that Leathe had contracted exactly as alleged in the third and fourth pleas of set-off. The referee seems to have treated the matter as if the issue before him were between the two contracts. And he expressly finds that the testimony adduced does not show that Leathe was acting under the contract of January 24, and that it does show by a "clear preponderance" that he did enter into the contract of March 25 as alleged by Thomas. It thus appears clearly and definitely that the judgment entered in the trial court on the referee's report was a judgment for recovery by Thomas under that contract. In other words, **it appears affirmatively that the judgment was based solely upon the third and fourth pleas** of set-off to which the federal judgment has been properly pleaded in bar, and not in any respect upon the first and second pleas.

All this is shown with equal clearness by the testimony. Although it is not proposed to analyze the testimony at this time, a brief reference to some of it may emphasize the fact that Thomas was making his fight solely under the contract of March 25; that the referee's findings were under that contract; that the trial court entered its judgment under it, and that the appellate court did likewise.

Charles W. Thomas, brother of defendant in error, says that he drew up the deed of March 25 and that the "consideration of that deed, where not expressed," was Leathe's promise to pay the company's debt; this was perfectly understood. (Rec., 75.) Referring to the document of January 24

he says that he told Leathe that under all the circumstances he did not think it possible of execution and that Leathe agreed with him. (Rec., 77.) But he says that in some respects it formed the "basis of a new contract" of March 25. (Rec., 77.)

Edward L. Thomas, the defendant in error, on cross-examination, referring to the document of January 24, says (Rec., 126):

> There was nothing done under that agreement directly * * * **My own individual evidence is that the agreement is not in force and never was in force. * * * I claim generally on the theory that he agreed to pay the money, for this conveyance to him.** (p. 129.) There was an abandonment by all of us of everything that had been done in regard to contracts or agreement or arrangements **and an entirely new one was made.** * * * We simply said that the old contract had no application to the new matter. A new contract would have to be entered into. And thereupon we went on and talked and several propositions were made and were rejected **and finally one was made that was carried out on the 25th day of March.**

Referring again to the document of January 24 and his signature attached to it, defendant in error says (p 134):

> **The whole matter was abrogated on March 25. We did not carry anything of that kind out; the whole thing was abrogated.**

This is a statement by Thomas himself. Referring again to the document of January 24 defendant in error says that he did not do the things that he agreed to do at the foot of that agreement (*ante*, p. .....). He asserts that (p. 134):

> It was the same road we intended to build but it was not built under the contract of January 24,

> nor was it built under the same name. That contract was entirely new and a distinct contract; made along different lines.

When his attention was called to the second plea in which the contract of January 24 was set up (p. 136) he said:

> I do not say that that is the contract existing between the parties or that it ever existed between them.

Chipley, one of the persons who signed the contract of January 24, was asked (Rec., ...):

> Q. Now, then, this contract of January 24, was it or was it not ever in force between the parties?
>
> A. That is the original; no sir. That never was in force.

Thomas was the moving party. It rested with him to make the issues in the case and to assert and prove his demand either under the contract of January 24 or March 25. Leathe could not make the issue for him. Here then was Thomas, as shown by his own testimony, denying even the existence of the contract of January 24, and therefore denying that any such issue was in the case. While Leathe, as shown by the referee's report, was rather in the attitude of saying that their relations were controlled by the contract of January 24. One of Leathe's exceptions to the findings of the referee (Rec., 60) was that he had failed to find that the relations between himself and Thomas were governed by the contract of January 24. He also excepted because the referee *had* found that their relations were governed by the contract of March 25.

In the face of this attitude of the parties and of the very definite character of the finding of the referee against the contract of January 24 and the express finding that the relations between the parties were governed by the contract of March 25, it is not difficult to understand why this very important case, involving a large sum of money, was settled by the lower court in that way in a *per curiam* opinion. It is difficult, however, to understand how, even in a *per curiam* opinion, the lower court could possibly assert that the "findings of the circuit and appellate courts are conclusive in this case that the evidence sustained the first and second counts of the declaration." In this connection this court will not fail to observe the statement of the dissenting justices below (218 Ills., at p. 266):

> **No evidence was introduced to sustain either the first or second plea** filed by the defendant in error and **the recovery was had under the third and fourth pleas** as clearly appears from the report of the referee referred to in the majority opinion.

The appellate court, referring to Leathe and the contract of March 25, among other things to the same effect says (109 Ill. App. Ct., at p. 464):

> It is fair to assume that, with counsel present to advise him and having had the matter under consideration for days before March 25, **he believed that it was to his advantage to enter into the agreements that were then made.**

VI.

The writer is familiar with the rule of law repeatedly recognized in the decisions of this court, that when a federal question is suggested on the record and is decided by the state court in favor of him

who claims under it, the latter has no grounds for appealing to this court. He is also familiar with the rule of law of equal authority in the decisions of this court that where a federal question is raised and is decided adversely to the claimant, but the judgment of the state court is based upon some other ground not of a federal character, this court will not disturb it. And both of these principles of law are invoked by Thomas on his motion to dismiss or affirm. He claims (1) that the federal question raised by Leathe was decided by the lower court in accordance with the contention of Leathe; and (2) that the lower court decided the case in his favor "upon questions of general law which are not subject to review by this court." In other words, he says that the lower court held that the federal judgment was a bar to the cause of action set up in the third and fourth pleas, and therefore that a judgment in his favor on those pleas could not be sustained. But he asserts that the judgment was rendered by the lower court, under the first and second pleas, on the contract of January 24, to which the federal judgment was not a bar, and that the record therefore presents no federal question, but only "questions of general law not subject to review by this court."

All this, so far as it is a mere theory of law, is familiar to the bar generally. But it is assumed that rights acquired under a federal judgment are substantial rights which this court will guard and protect. It is assumed that when a federal court has, by its final judgment, disposed of a controversy, the person in whose favor the judgment was so rendered may confidently rest upon it as giving him a substantial

and practical immunity from further prosecution on the same subject-matter. No mere *ipse dixit* of the state court will be allowed to deprive a litigant of the benefits acquired under the judicial action of a federal court. Conceding the largest measure of finality to the rulings of state courts on questions of pleading, practice and procedure and of local and general law, this court, it is assumed, will nevertheless not submit to the proposition that a state court may say that a judgment which on the face of the record was rendered on one contract or cause of action which is barred by a federal judgment, was or may be held by the state court to be a judgment on another contract which is not barred by a federal judgment. In other words, it is assumed that this court will not abide by the mere surface appearance of things as created by the opinion of a state court, but, in the protection of rights acquired under a federal judgment, will look into the substance of things and ascertain their real character.

The plaintiff in error is not here contending for a construction or a ruling by this court differing from that of the state court on any matter of pleading, practice or procedure or of local or general law presented by this record. He contends only that this court is as competent as any other court to *see* what appears *on the very face* of this record. When the lower court says, as it does (p. 255-6), that the "findings of the circuit and appellate courts are conclusive that the evidence sustained the first and second counts of the declaration" and thus deprives the plaintiff in error of the benefit of a federal judgment, it is contended that this court is competent to *look* at the rec-

ord and to see whether *on its face* there is any such finding there. When the lower court says, as it does (p. 256), that "we have no means of determining on this record that the first and second pleas are not treated as presenting substantial issues in the case," and thus deprives the plaintiff in error of the results of a judgment awarded to him by a federal court, it is contended that this court may *look* at the record and see whether *on its face* it does not appear at a glance that the first and second pleas of set-off were treated as not presenting substantial issues in the case. If this court finds *on the face of the record* that the defendant in error himself denied even the existence of a contract of January 24, and that the referee took the same view, and that the appellate court supported the view of the referee, and that all this appears *on the face* of the record where any one may see it without resorting to construction, it would seem that this court, in the protection of rights acquired under a federal judgment, may say whether the statements of the lower court are correct according to the record.

It may be said also in passing, that when the learned counsel for defendant in error says (pp. 14, 15) that the lower court decided the federal question in favor of the contention of Leathe, this court is competent *to look* at the opinion of the lower court and *to see* (pp. 253, 254) that, on the contrary, the lower court decided the federal question against the plaintiff in error. It expressly puts itself on the decision of the appellate court as to that question and says (p. 254), that the appellate court "considered and decided that question." The appellate court did consider and de-

cide the federal question, but it decided it against the plaintiff in error. (109 App. Ct., 454 *et seq.*). Moreover that court, as this court is competent to see *on the face of its opinion*, sustained the judgment of the trial court as a judgment under the contract of March 25 as a judgment under the third and fourth pleas only.

Under section 16 of chapter 37 of the Revised Statutes of the State of Illinois justices of the Supreme Court are required, in cases submitted to it, to deliver and file written opinions. It is also provided that "such opinions shall also be spread at large upon the records of the court." The opinions of the Supreme Court of Illinois are therefore properly a part of its records, and it has been so held by this court.

Gross v. *U. S. Mortgage Co.*, 108 U. S., p. 477, 486.

See also

National Foundry, etc., Works v. *Oconto, etc., Co.*, 183 U. S., 216, 234.

On the short record accompanying his motion counsel for the defendant in error has printed the opinion of the lower court by interposing the names of counsel on both side between the statement of the case and the *per curiam* discussion of the law, thus separating the statement by the court from the balance of the opinion and giving it somewhat the appearance of having possibly been prepared by a reporter. The whole opinion appears on the record in its proper form. And the statement of the case by the court is as much a part of it as the *per curiam* discussion of the ques-

tions of law. The statement is the statement of the court. And this court is bound by that statement as much as by any other part of the opinion.

Now, in the statement of this case the lower court, (see 218 Ill., at p. 250), referring to the *purpose* of the suit by Thomas against Leathe in the Circuit Court of St. Clair County, which was afterwards removed to the federal court and there decided in favor of Leathe, says that it was brought by Thomas to recover the amount owing to him by the railway company on the ground that on March 25, when the assets of the railway company were transferred to Leathe, the latter "agreed to pay the debts of said company including its debt to defendant in error."

Immediately following this statement of the purpose of *that* action the court says, with reference to *this* action:

> The claim **sought to be set-off** in this suit **and upon which judgment was rendered in favor of the defendant in error** is the indebtedness of the Belleville & St. Louis Railway Company to the defendant in error and which it is claimed was, in part, the "other valuable considerations to it from him moving," specified in the deed from the Belleville & St. Louis Railway Company to the plaintiff in error, and **which claim, it is said, the plaintiff in error assumed and agreed to pay.**

The language is that "the claim **sought to be set-off** in this suit and upon which **judgment was rendered,** etc." In other words, the **purpose** of this suit was to recover against Leathe under the contract of March 25. The **very object and subject-matter** of the action, as thus stated by the lower court itself, was the alleged agreement of Leathe in the deed of

March 25 to pay Thomas what the company owed him. That was the issue between the parties. It is so stated by the state supreme court. The referee, the trial court and the appellate court all so understood it. And immediately preceding that statement of the issue in *this* case is the court's own statement of the issues in the prior case in the federal court. The two issues are identical. And no amount of sophistry or explanation can distinguish them.

The identity of the subject matter of this proceeding in which judgment was rendered for Thomas and against Leathe with the subject matter of the action in the federal court in which judgment was rendered for Leathe and against Thomas is thus clearly established and definitely appears on the very face of the final opinion of the state supreme court.

It is this exact identity of the issue in the two cases that led the lower court in its first opinion to apply the principle of *res judicata.* It is this exact identity of issue that leads counsel now to acknowledge it (pp. 14, 15) and to claim that the lower court has acknowledged it in its *final* opinion. He thus endeavors to assert that the federal question has not been decided adversely to the plaintiff in error.

The above statement by the state supreme court of the *purpose* and *object* and *subject matter* of this case, it is earnestly contended, is binding upon this court and requires it, in the protection of the federal judgment in favor of the plaintiff in error, to apply the principle of *res judicata.* If the *object* and *subject matter* of this suit are the same as in the case in the federal court, this court, in order to arrive at substan-

tial justice and give to the plaintiff in error the substantial and effective results of his federal judgment so that it may not go for naught and be wholly nugatory, will not permit the supreme court of the state, in defiance of the obvious facts on the record and without a finding or trial, to sustain the judgment on the first and second pleas under the contract of January 24.

VII.

The second contention by the plaintiff in error on this motion is that the judgment entered against him herein, if it is to be regarded in any sense as a judgment on the first or second counts as the lower court has held, was rendered against him without due process of law. This seems to be a clear and plain proposition and a brief statement will, it is thought, put it beyond any reasonable controversy.

Here then is a declaration in set-off that counts upon two distinct contracts, one of January 24 and one of March 25. These contracts, as heretofore shown, were not only made under different circumstances, at different times, and in the presence of different witnesses, and to meet different conditions, but they are, so far as Leathe's alleged obligations under them are concerned, absolutely contradictory. The evidence adduced to prove the contract of March 25 would not suffice to support the contract of January 24. So, on the other hand, the evidence in support of the contract of January 24 would not be sufficient to uphold the contract of March 25. The essential purpose of the two agreements was different. The earlier

contract involved no personal responsibility on the part of Leathe. He simply joined with others in the formulation of an understanding, by which each of the parties was to receive the amount of his own advancements, not from Leathe, but out of the proceeds of the company's bonds. This understanding was subject to the condition that Leathe should receive his advancements before the others were entitled to receive any portion of their advancements.

If Leathe could be charged with liability in any event under that document of January 24 it could be only on the ground that the proceeds of the sale of the bonds had come into his hands and that he held the funds as trustee to carry out the arrangement embodied in the document. And such a proceeding would require, before judgment could be entered upon it against Leathe, an accounting showing the amount of the advancements by each of them, including Leathe. And in case, after Leathe had been repaid his advancements in full, the balance were not sufficient to pay the other parties to the agreement there would have to be some equitable distribution of the balance among the others. The special point to be observed is, that under that agreement no one party to it could bring a suit against Leathe in his personal capacity, but only as a trustee of the proceeds of the bonds, or could demand the full payment of his special advancements without *pleading and proving* that Leathe had been fully repaid his own advancements and without showing also that the balance in Leathe's hands was sufficient fully to cover the advancements of *all* the other parties to the contract. No judgment against Leathe

could be entered on that contract without some finding by the court, jury or referee that Leathe had been repaid his advancements in full. There is no such finding on this record either by the referee or the court. Nor could there be any judgment against Leathe and in favor of Thomas without some finding by the court, jury or referee that there were funds in Leathe's hands out of the proceeds of the bonds sufficient to repay Thomas after Leathe himself had been repaid. But there is no such finding. How then could a judgment be entered herein on the contract of January 24?

On the other hand Leathe's alleged obligation under the deed of March 25th had no relation to the sale of the bonds of the company. Whether they were sold or not and without regard to whether Leathe's advancements to the railway enterprise had been first repaid or not, he was under a positive liability, as the alleged promise is explained by Thomas, to pay Thomas out of his personal funds the full amount of the debt due him by the railway company.

The two documents therefore involve entirely different causes of action, although embraced on this record within the one declaration. Upon each document Thomas could have brought a separate action. Both causes of action were submitted under the declaration to the referee. **He found for the claimant expressly upon one cause of action. He made no finding of any kind upon the other cause of action.** It is assumed, from what has already been said of his report, that this is too clear and plain on the very face of the report, as well as from the subsequent proceedings in the case, to admit of any controversy. His report was

the only finding in the case and it was limited to the cause of action set up by Thomas under the contract of March 25.

It therefore follows that whether his report be considered as the equivalent of a finding by the court itself or whether it be considered as having the force of a verdict by a jury, it is nevertheless a finding or a verdict upon the one cause of action. And it is expressly so stated. It makes no difference whether that cause of action is in the form of a separate action or of a separate count. The report cannot by any process of reasoning be deprived of its character as a finding or verdict expressly and specifically upon a distinct cause of action. It therefore can support a judgment on that cause of action only. There has been no finding express or general and no verdict of any kind upon the other cause of action. There is therefore nothing to support a judgment on the cause of action under the contract of January 24. And without attempting or venturing at this time to give an adequate definition of due process of law, it may be assumed that, in order to satisfy that fundamental constitutional requirement, a party must be entitled to some sort of finding, upon the claim made against him or upon his defense to the claim, upon which a judgment may be predicated and properly entered against him.

There was no such finding in this case as to the contract of January 24, either by the referee or by the trial court. And there can be no pretense that there was. Thomas himself had repudiated the existence of the contract of January 24. The referee's report is limited absolutely to Thomas' claim under the contract of

March 25. There was no rehearing of the matter in the trial court or any new findings by that court. The exceptions to the referee's report were overruled by the trial court. The report was then approved by the trial court, and judgment was then entered by the trial court against the plaintiff in error *on the referee's report.* A verdict or finding expressly against A., one of two defendants, will not enable a court to predicate a judgment upon it against B., the other defendant. Nor will a finding or verdict expressly based on the contract of March 25 enable the court to predicate upon the finding a judgment on the contract of January 24. This is not due process of law, as the writer understands it.

The judgment of the trial court was taken by writ of error to the appellate court. *Leathe* v. *Thomas,* 109 Ill. App., 434. That court says (p. 457):

> **The important issue of fact in this case is** what was understood by "other valuable considerations" **in the deed from the Belleville & St. Louis Railway Company to the appellant,** and whether as a part of such consideration, appellant agreed to pay the debts of said company.

In other words the issue is the claim of Thomas under the contract of March 25. It then says (p. 459):

> In passing upon this issue of fact **the finding of the referee,** who was appointed by the court with the consent of both parties, and who saw and heard the witnesses, **is entitled to the same consideration as a verdict of the jury.**

The court then reviews the evidence addressed to the particular cause of action embodied in the third and fourth counts. It does not discuss the other cause of action. In other words, it sustains the demand of

Thomas under the contract of March 25. It makes no finding and reaches no conclusion whatever as to the claim of Thomas in the first and second pleas of set-off under the contract of January 24. All this is apparent upon the very face of the opinion of the court. And in order to sustain the judgment of the trial court as a judgment on the third and fourth pleas,—a judgment on the contract of March 25,—the appellate court was compelled to and did decide that the federal judgment was *not* a bar to those pleas.

The case then went to the Supreme Court of Illinois upon a writ of error. The jurisdiction of that court is limited by law to the consideration of questions of law. It makes no finding of facts. The sole question of law properly before it in this case which need be considered at this time was, whether the prior judgment in the federal court was *res judicata* to the claim of Thomas in this action under the third and fourth pleas. And under Rev. Stat. Ill., Ch. 37, Sec. 16, its opinion is part of this record and may be here examined to see what it did. *Gross* v. *U. S. Mortg. Co.*, 108 U. S., 477, 486.

It is manifest that the referee considered only the cause of action presented by the third and fourth pleas and made no finding under the first and second pleas. It is equally clear that the trial court expressly based its judgment upon the report of the referee and its approval of it and therefore solely upon the cause of action set forth in the third and fourth pleas. And the appellate court, having by law the right to review the evidence, based *its* judgment upon the report of the referee giving to it the effect of a verdict of a jury,

and upon its own review of the testimony addressed to the cause of action set up in the third and fourth pleas. Nevertheless the supreme court enters an order of affirmance sustaining the judgment under the *first and second pleas*, **without any previous finding by the referee or by the trial court or by the appellate court upon the cause of action set up in the first and second pleas.**

Up to that point the judicial machinery of the state had acted only with respect to Thomas' cause of action, set up in the third and fourth pleas, under the contract of March 25. The sole question before the supreme court therefore was whether the doctrine of *res judicata* applied to the cause of action set up under the third and fourth counts. And to that question the first opinion of the Supreme Court of the State was addressed. It held that the doctrine did apply and that the federal judgment was a bar to the claim set up in those two pleas. All that it could lawfully do then was to set aside the judgment rendered on that claim or cause of action and to remand for trial the unadjudicated cause of action under the first and second pleas. Instead of doing that it rendered judgment on it. It was only in its second or final opinion that the judicial machinery of the State of Illinois first touched the claim or demand, or cause of action of Thomas under the contract of January 24. The supreme court passed upon it then without any finding by a referee or a verdict by a jury or a finding by a court authorized by law to make a finding of fact and to pass upon the testimony adduced by the parties.

It is earnestly insisted that this is not due process of law.

VIII.

At the close of the opinion, the lower court (p. 257) in upholding its judgment on the *second* count of the declaration, seems to make some point of the fact that Leathe had not pleaded the federal judgment in bar of the cause of action set up in the second count on the contract of January 24, and of the fact that it was not denied below by Leathe, as manifestly it could not be, that the federal judgment was not a bar to the cause of action set up in the second count. The lower court also states at the same point that on the argument it was admitted that Thomas had the right to an accounting under the contract of January 24. This may now again be admitted. But this court will understand the force and effect of the admission, as the lower court certainly did not. If the federal judgment was based, as clearly it was, on the alleged contract of March 25, manifestly it could not be asserted by Leathe that the federal judgment was a bar to an action on the contract of January 24. Leathe therefore properly admitted that it was not a bar to an action on that contract. But he also asserted that Thomas could recover against him under the contract of January 24 *only upon an accounting,* showing:

1. That the funds from the sale of the bonds had come into Leathe's hands.

2. That the full amount of Leathe's advancements to the railroad company had been repaid as that contract provided.

3. That after such repayment to him there was a sufficient balance of the proceeds of the sale of the

bonds to satisfy the claims of Thomas and his colleagues.

Such an accounting has not been had. There has been no pretense of an accounting. This record is bare of any finding by jury, referee or court that the funds from the sale of the bonds did come into Leathe's hands, that Leathe's advancements have been repaid or that there remains a sufficient balance of such funds to satisfy the claims of Thomas and his colleagues. Without such findings either by a jury, a referee or by some court other than the supreme court, which is not authorized by law to make original findings of fact, no judgment could be predicated against Leathe under the contract of January 24. But regardless of the absence of such a finding by jury, referee or court, and in the face of a finding both by the referee and by the appellate court against the contract of January 24 and for the contract of March 25, the supreme court has entered up a judgment against Leathe on the contract of January 24. There has been no trial of that issue.

In this connection attention is called to the statement of the lower court, citing previous adjudications by it, that (p. 256):

> We have held that the finding of the referee is entitled to the same weight and credit as the verdict of a jury.

If the report of the referee herein is to be thus regarded, as it ought to be, as equivalent to the verdict of a jury, it is clearly governed by that clause of the practice act (Rev. Stat. Ill., Ch. 110, Sec. 58c), which provides in relation to verdicts:

> When the special finding of fact is inconsistent

> with the general verdict the former shall control the latter and the court may render judgment accordingly.

There is nothing of a general nature in the report of the referee, but if, as seems to be the case with the lower court, any one can see in that report a finding of a general nature, the general finding must be controlled by the special finding. That special finding is that the contract of March 25 controlled the relations of the parties. Judgment could be entered therefore only in support of that special finding, that is to say, only under the third and fourth pleas and not under either the first or second pleas.

The unusual and peculiar manner in which the Supreme Court of the State of Illinois dealt with this case has required an examination of the record in some detail and fullness and has consequently extended this reply more perhaps than is desirable upon a motion of this nature. It has seemed necessary, however, to put the case before this court with some fullness.

The fact that the lower court first decided the case for the plaintiff in error upon a federal question and subsequently changed its point of view on that question is of itself suggestive of the propriety of reserving the case for a full argument in the usual course. The need of so doing is emphasized by the very strong and clear dissenting opinion that appears on the record. Moreover when the record shows so obviously and definitely that the case from its inception proceeded under the third and fourth pleas and on the contract of March 25, and resulted in the first instance in a formal opinion by the Supreme Court of the State

in favor of the plaintiff in error; and when the judicial machinery of the state touched the first and second pleas and the contract of January 24 for the first time only on re-hearing and then, without any finding by referee or verdict by a jury, disposed of substantial rights secured to one of the parties under a federal judgment after a protracted litigation, the case would seem to require the close examination by this court that can be had only upon a formal hearing. When a case is tried throughout on one theory and on one set of pleas and on one contract, and is finally decided in the highest court of the state on another theory and on another set of pleas and upon another contract and then without any hearing by a referee or by a jury or by a court entitled to hear testimony and to make findings of facts, the result is not likely to be satisfactory or in the interest of justice. To that extent the case resembles *Peoria Gas and Electric Company* v. *Peoria*, 200 U. S., 48, 54, and the judgment should be reversed for the reasons there stated.

The motion to dismiss or affirm should be denied and the case reserved for hearing in due course.

Respectfully submitted.

(Signed) JAMES S. HARLAN,
JOHN MAYNARD HARLAN,
VICTOR KOERNER,
Attorneys for Plaintiff in Error.

For the convenience of the court, the report of the referee frequently referred to in the foregoing pages has been printed as an appendix. It appears on the original record at pages 253-259.

APPENDIX.

Report of Referee.

State of Illinois, St. Clair County. } ss.

In the Circuit Court,
January Term, A. D. 1902.

Samuel H. Leathe,
vs.
Edward L. Thomas. } Debt.

The undersigned, to whom said cause was referred at a former term of this Court, with directions to take and hear all evidence offered by either party, and to report to the Court such evidence together with his findings of fact and conclusions of law, respectfully reports that he has heard all the evidence offered by the respective parties, and caused the same to be reduced to writing, and such evidence with the exhibits thereto, together with the evidence considered by the undersigned taken before L. D. Turner, Esq., the former Referee in said cause, he submits herewith to the Court.

This suit was commenced to the January term of this Court, A. D. 1898. The plaintiff declared in the usual form on two judgments obtained by him against the defendant in the Circuit Court of the City of St. Louis, Missouri,— the first of date March 5th, 1896, for $2,278.63, and the other of date January 5th, 1897, for $923.75.

The defendant does not question the regularity or validity of these judgments, but pleads matters of set-off largely in excess thereof, and insists on a judgment in his favor for the difference. Four pleas were filed: (1) Common Counts—money had and received, interest and account stated. (2) Special plea based on what is called the contract of January 24th, 1893, and the proceedings of March 25th, 1893 (both of which will be explained later), and averring that plaintiff sold the bonds mentioned in the contract for $500,000 and received the money therefore; that plaintiff had expended, to wit: $300,000 in building the railway, and that was due defendant as per statement in the contract, to wit, $70,000 which was to be paid defendant as in the contract specified and which plaintiff should have paid out of the $200,000 remaining in his hands.

(3) Special plea based on the conveyance to plaintiff March 25th, 1893, from the Belleville and St. Louis Railway Company of a large tract of land for one dollar and other valuable considerations that the other valuable consideration was the promise of the plaintiff then and there made to pay the indebtedness of said Company then existing to divers parties, including one to defendant of, to wit, $60,000; that at the September Term, 1893, of this Court defendant brought suit against the Company for the amount so due him; that the Company notified plaintiff herein and he employed counsel and defended the suit, and defendant herein obtained judgment for $53,022.23, which judgment is still in full force and effect; sets up plaintiff's efforts to enjoin the prosecution of said suit, issues presented, to full hearing by the Court and dismissal of the bill.

(4th) Special plea setting out the deed in *haec verba* from the Belleville and St. Louis Railway Company to plaintiff of March 25th, '93, avers that the property conveyed thereby was of the value, to wit:—one hundred thousand dollars; that the Company at the time was indebted to divers persons in the sum, to wit:—of ninety thousand dollars including an indebtedness to defendant of, to wit:—sixty-five thousand dollars, of which indebtedness plaintiff had full notice; that the consideration of said deed was the promise of plaintiff then and there made to pay said indebtedness of the Company, including defendant's claim, within a reasonable time thereafter, which time has long since elapsed, and plaintiff has not paid said sum or any part thereof.

Finding of Fact.

In the Spring of 1889 defendant organized a railroad with a view of building a road from East St. Louis to Belleville with special reference to the coal fields lying near the bluffs. Later one Captain W. A. Adams became interested in the enterprise, and later still—in the fall of 1892—the matter was laid before the plaintiff Leathe. A statement was furnished him showing the amount that had been expended in the enterprise by defendant and others for which the Company was responsible. After an examination by plaintiff and an engineer employed by him he requested defendant to draw up a contract embodying briefly the substance of their previous conversation on the subject. Defendant then drew the paper generally referred to as the agreement of Jan. 24th, '93, referred to in 2nd plea. This

was signed by defendant Thomas and Bart S. Adams (son of Captain Adams, deceased) and handed to plaintiff for his signature and the signature of Mr. Chipley, a promoter who was to be co-partner in the matter with plaintiff. This instrument provided that Messrs. Leathe and Chipley were to put up funds to carry on the enterprise, and to negotiate $500,000 bonds of the Company; for a distribution of the capital stock of the Company; that each party was to receive back the amounts advanced to the enterprise as soon as the bonds were sold—Thomas and Adams the amounts as per statement rendered and Leathe the amount to be advanced by him and the balance to go into the Treasury; the first proceeds of bonds to be applied to payment of amounts advanced by Leathe until satisfied. This contract was not signed at the time by Messrs. Leathe and Chipley, though still retained in the possession of Mr. Leathe. In the meantime the plaintiff purchased valuable properties as he claims in pursuance of the contract, but as defendant claims taking the titles in his own name, so that he would be working under the contract or not as he might subsequently elect. A few weeks later matters culminated in the agreement generally referred to as the agreement of March 25th, '93, referred to in the 2d plea on that day to Belleville and St. Louis Railway Company conveyed to the plaintiff the property, rights of way, embarkments, superstructures, etc., of the Company, "in consideration of one dollar and other valuable considerations from him to said Company moving." The same day as a part of the transaction he took an assignment

of the stock transfer book of the Belleville City Railway Company 4995 shares of the capital stock of that Company; then for the stated sum of $499,500 he conveyed to the Belleville City Railway Company said properties, which conveyance was accepted by the latter Company, as a full payment of One Hundred per cent on his said share of stock in that Company. Thereafter the enterprise was conducted and the road finished under the charter and judgment of the Belleville City Railway Company. Plaintiff, Leathe, being the principal stockholder, and directing and managing its affairs generally. Bonds were issued for the sum of $500,000, and later bonds, stock and all were sold by plaintiff for the sum of $500,000.

It is claimed by the plaintiff, substantially, that all he did in the premises was in pursuance of the agreement of January 24th; that the arrangement of March 25th imposed no additional burden on him, but related wholly to organizing under the Belleville City Railway Company charter instead of continuing under that of the Belleville & St. Louis Railway Company.

While plaintiff (claims to) have been acting with reference to the contract of Jan. 24th the evidence does not show conclusively that he was. It was not signed by him and Mr. Chipley until some time after the consummation of the arrangement of March 25th, and when it was signed by them Mr. Chipley swears Mr. Leathe suggested it would be well to forget the date of their signing it. And the matter of organizing under the Belleville City Railway Charter involved, according to the evidence, more than simply the selection of a name. It was known to all concerned that the Belle-

ville and St. Louis Railway Company had some indebtedness. It was also understood that the stock of the organization was to be fully paid, and that the conveyance from Mr. Leathe to the new organization was to be accepted in full payment of his stock. *In addition to this there is a clear preponderance of the testimony to the effect that plaintiff agreed as a consideration of the conveyance to him of the property and assets of the Belleville and St. Louis Railway Company to pay the debts of that Company, the amount of which debts the evidence shows he knew.* After the 25th of March, 1893, defendant brought suit in this Court against the Belleville and St. Louis Railway Company to establish the amount of the Company's indebtedness to him. Mr. Leathe, was notified to defend the suit if he wished to do so. He employed counsel and interposed a defense. The case was tried and judgment rendered for the defendant herein the sum of $53,022.23. *That judgment is still in full force and effect and represents an indebtedness which the undersigned holds the evidence shows the plaintiff promised to pay as a part of the consideration of the deed to him of March 25th,* 1893.

Conclusion of Law.

The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff *for the amount of said judgment* and interest thereon, less the amount of plaintiff's said judgments against defendant and interest thereon.

Defendant's judgment, Dec. 21st, 1893.....		$53,022.23
Int. Jan. 11, 1902, 8 yrs. 20 days, 5%.....		21,356.17
		$74,378.40
Deduct plaintiff's judgments:		
Judgmt. Mar. 5th, '96.....	$2,278.63	
Int. on 337.27 8% 5 yrs. 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgmt. Jan. 5th, '97.....	923.75	
Int. 6% 5 yrs. 6 days	278.04	4,319.65
Balance		$70,058.75

for which judgment is recommended in favor of defendant Edward L. Thomas.

Respectfully submitted,

MARSHALL W. WEIR,
Referee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 246.

SAMUEL H. LEATHE, *Plaintiff in Error,* *vs.* **EDWARD L. THOMAS,** *Defendant in Error.*	In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

In the year 1889 Thomas, the defendant in error, organized the Belleville & St. Louis Railway Company for the purpose of building a railroad from East St. Louis to Belleville, Illinois. Thomas was a man of limited means; he therefore opened negotiations with the plaintiff Leathe and with one Chipley with the view of enlisting their financial aid in the enterprise. The negotiations resulted in an agreement, hereafter referred to as the "agreement of January 24, 1893." That agreement provided for an apportionment of the

stock of the company; that Leathe and Chipley were to provide funds to float the venture; that the company should issue $500,000 of bonds; that Leathe and Chipley would negotiate these bonds; that out of the proceeds they would first reimburse themselves for their advancements and that out of the remainder the sums paid into the concern by Thomas and one Adams (the latter having previously advanced some money to the enterprise), should be returned to them. This contract was not signed by Leathe and Chipley at the time it was drawn up, but was signed by them at a later date.

The agreement in full follows (Rec., 19):

> "It is agreed that we will transfer to Samuel H. Leathe $255,000 of the stock of the Belleville and St. Louis Railway Company and to Lucien M. Chipley $78,300 of said stock, said Samuel H Leathe and Lucien M. Chipley to put up funds to carry on said enterprise and to negotiate and sell $500,000 five per cent. bonds of said company, the present bonds, $150,000, to be placed in the hands of Samuel H. Leathe to hold until other bonds are issued, he to advance the amount necessary to take up four bonds now held by Mrs. Johnson, $2,000, with interest, and Third National Bank, $750, with interest, in St. Louis. Same proportion of stock to be maintained in coal or other companies organized to carry out the project, as per letter of January 12, 1893, to S. H. Leathe by Edward L. Thomas. Edward L. Thomas to have $104,000 of stock, Bart S. Adams $50,000, and John T. Taylor $12,700, each party to receive back amounts advanced to the enterprise as soon as bonds are sold. Said Thomas and Adams to receive amounts as per statement rendered and said Leathe to receive amount to be advanced by him, and balance to go into the treasury of the railway company. First

proceeds of bonds to be applied to payments of amounts advanced by said Leathe until satisfied.

Dated January 24, 1893.

EDWARD L. THOMAS,
BART S. ADAMS,
SAMUEL H. LEATHE,
LUCIEN M. CHIPLEY.

In consideration of the above agreement, I agree to leave in the hands of Mr. Leathe all sums coming to me as a guarantee of the statements made in my letter of January 12, 1893, and as security, to hold until all matters are fully arranged and paid for which I am responsible, as per said letter and statement rendered.

EDWARD L. THOMAS."

On March 25th of the same year, to quote from the finding of the referee (Rec., 56), "matters culminated in the agreement or conveyance generally referred to as the agreement of March 25, 1903." The material part of that instrument was "that in consideration of $1.00 * * * and of other valuable considerations," the Belleville & St. Louis Railway Company conveyed to the plaintiff in error all of its property. Simultaneously with the execution of this conveyance and as a part of the same transaction, plaintiff in error reconveyed all the property which he had thus acquired to the Belleville City Railway Company. The object of this entire transaction was to reorganize the company under an old legislative charter held by the Belleville City Railway Company and which was believed to be more favorable, in some respects, than the statutory charter under which the Belleville & St. Louis Railway Company had been organized.

The contract of March 25, 1893, is as follows (Rec., 30):

"The grantor, the Belleville and St. Louis Rail-

way Company, a corporation of the State of Illinois, in consideration of one dollar to it in hand paid by Samuel H. Leathe, of the City of St. Louis, Missouri, and of other valuable considerations to it from him moving, hereby grants, bargains and sells, conveys and confirms unto the said Samuel H. Leathe all the following described lands, situated in the County of St. Clair and State of Illinois: All that tract of land conveyed by the St. Louis, Alton and Terre Haute Railroad Company to the said grantor by deed, dated December 12, 1890, and recorded herewith, reference being made to said deed for a more particular description thereof; also all the rights of way, easements, grading and superstructure thereon, acquired by or for the grantor for the purpose of building a railroad between Belleville and East St. Louis. And the grantor covenants and agrees to and with the said Leathe, that it will, upon demand, convey, by good and proper deed of conveyance, to said Leathe and his assigns, any land, easements and rights of way, privileges or immunities, it may hereafter acquire.

Dated this 25th day of March, A. D. 1893.

THE BELLEVILLE AND ST. LOUIS RAILWAY CO.,
By EDWARD L. THOMAS,
President.

(Seal)

Attest:

HENRY M. NEEDLES,
Secretary.

We, the undersigned, being all the stockholders of the Belleville and St. Louis Railway Company, hereby ratify and confirm the foregoing deed.

BART S. ADAMS,
HENRY M. NEEDLES,
JOHN T. TAYLOR,
A. BOLING,
EDWARD L. THOMAS,
JOSEPHINE JOHNSON,
By EDWARD L. THOMAS,
Proxy."

Out of the negotiations resulting in the above contracts a mass of litigation has sprung. In order that the merits of the present controversy may be clearly comprehended, it is necessary to have in mind the former suits which grew out of these same transactions.

In the year 1893 Thomas brought an action against the Belleville and St. Louis Railway Company in the Circuit Court of St. Clair County, Illinois, to recover the amount of the alleged indebtedness of that company to him by reason of his advancements to it. The company notified plaintiff in error of the pendency of that action and authorized him to use its name in defending the suit for the company but he himself was not made a party to the action. Leathe accordingly employed counsel and defended the suit. He also filed a bill on his own behalf and on behalf of the Belleville and St. Louis Railway Company and the Belleville City Railway Company (the latter company having succeeded to all the rights of the former) to restrain the action at law. The bill was dismissed and in the action at law judgment was rendered against the Belleville and St. Louis Railway Company in favor of Thomas for $53,022.23.

Thomas then caused a suit to be commenced in 1894 in St. Clair County, Illinois, in the name of the Belleville and St. Louis Railway Company for his own use against the plaintiff in error. This suit was founded on the contract or deed of March 25, the theory of the case being that by virtue of the agreement of March 25, 1893, the plaintiff in error became personally liable

for the debt of the Belleville and St. Louis Railway Company, which was evidenced by the above mentioned judgment against it; that bound up in the expression "and other valuable considerations" used in the instrument of March 25, 1893, there was included an undertaking on plaintiff's part to pay the obligations of the railway company. This suit was removed to the Circuit Court of the United States for the Southern District of Illinois. The only plea filed by the defendant Leathe was that of the general issue. The only evidence adduced by the plaintiff was the record of the judgment at law and of the decree in equity above referred to. It is thus apparent that the sole question in issue in that case was whether or not Leathe was personally liable for the debts of the Belleville and St. Louis Railway Company or of its successor, the Belleville City Railway Company. The Circuit Court of the United States held that "the question of his (Leathe's) personal liability to pay that debt was not an issue in the original action (*Thomas* v. *Belleville and St. Louis Railway Company*) in the Circuit Court of St. Clair County, and therefore he could not have been concluded by the judgment" in that case and that Thomas had failed to make out a case against Leathe by merely placing in evidence the transcripts of that judgment and of the above mentioned decree. The court accordingly gave judgment for the defendant Leathe. This case was appealed to the Circuit Court of Appeals where the judgment of the lower court was affirmed.

Belleville and St. Louis Railway Co. v. *Leathe*, 84 Fed., 103.

This brings the discussion to the present controversy. In the year 1897, the plaintiff in error brought an action (Rec., 5) in the Circuit Court of St. Clair County against Thomas on two judgments obtained in the Circuit Court of the City of St. Louis, Missouri; one for $2,278.63 and the other for $923.75. Defendant in error did not deny the validity of plaintiff's claim, but set up by way of defense four pleas of set-off.

The first plea of set-off was on the common counts for money had and received, for interest on sums foreborne, and for money due on account stated. (Rec., 10.)

The second plea of set-off (Rec., 19) counts on the document of January 24, 1893.

The third plea of set-off (Rec., 26) is based on the instrument of March 25, 1893, and sets out in substance that in the expression "other valuable consideration to it from him moving," was included a promise by Leathe to pay Thomas the debt due him from the railway company. It further alleged that Thomas had brought suit in the Circuit Court of St. Clair County against the Belleville and St. Louis Railway Company to recover the amount so due him and that he had recovered a judgment for $53,022.23, which sum Leathe, under the contract of March 25, had agreed and undertaken to pay.

The fourth plea of set-off (Rec, 30) also counts on the document of March 25, 1893. The allegation is that Leathe was "and is still indebted to him (Thomas) in a large sum, to-wit, the sum of $65,000 *upon a con-*

tract theretofore entered into by said plaintiff and the Belleville and St. Louis Railway Company for the benefit of the defendant."

The instrument of March 25th is then set out in full. The pleader proceeds to aver that the deed was accepted by Leathe; that the property described in it was of the value of $100,000; that the company was indebted to the extent of $90,000, of which $65,000 was owing to Thomas; that Leathe had full knowledge of these facts; that the consideration moving from Leathe for the deed was Leathe's promise and agreement with the company to pay its debts within a reasonable time, including the debt of Thomas; and that by reason thereof Leathe became liable to pay the debt to Thomas.

Leathe's demurrer to the four pleas of set-off interposed by the defendant in error was overruled (Rec., 40). He then filed a general replication to all the pleas. But to the third and fourth pleas of set-off he also filed a special replication (Rec., 38), setting up, as a bar to both pleas, the action against him by Thomas commenced in the Circuit Court of St. Clair County at the April term, 1894, and afterwards removed to the Circuit Court of the United States for the Southern District of Illinois, where the issues were found for Leathe and judgment was entered therein for him with costs.

The case was referred to a referee with instructions to report to the court both his findings of fact and conclusions of law. **No evidence whatever was introduced by the defendant in error to support the first and sec-**

ond pleas. The referee found for the defendant Thomas in the sum of $70,058.75. The referee, as he expressly states and sets forth in his report, arrived at the sum due by taking the amount of the judgment, which had been obtained by Thomas in his suit against the Belleville and St. Louis Railway Company, adding interest thereto at 5 per cent. and deducting from this total sum the amount of plaintiff's judgments upon which he had brought the present action, with interest. The appellate court adopted the finding of the referee and affirmed the judgment of the trial court.

The case next went to the Supreme Court of Illinois on a writ of error. That court first reversed the judgment of the appellate court and held in a unanimous opinion for the plaintiff in error. The opinion of the court is summarized (Rec., 1301) in the following language:

> "From an examination of this record we have been forced to the conclusion that the Circuit and Appellate Courts erred in holding that the judgment of the Circuit Court of the United States was not a bar to defendant in error's right of recovery in this case under the pleas of set-off filed by him, **as we think it apparent the question whether or not the plaintiff in error agreed to pay to defendant in error the debt due him by the Belleville and St. Louis Railway Company was in issue in that case and was decided therein adversely to the defendant in error,** and that that judgment was a final judgment upon the merits and binding upon the defendant in error, and is *res judicata* of the question presented by said pleas of set-off."

Upon rehearing the lower court reversed its decision

and affirmed the judgment against Leathe on the ground that it had "inadvertently overlooked the issues made on the first and second pleas" of set-off, and that the judgment could be sustained on the first and second pleas. *Leathe* v. *Thomas,* 218 Ill., 254. The court at page 256 says:

> "We have no means of determining on this record that the first and second pleas were not treated as presenting substantial issues in the case."

Two of the most eminent members of the court, Cartwright, C. J., and Hand, J., dissented from this last opinion. The case comes directly to this Honorable Court on a writ of error, the contention of plaintiff in error being that constitutional questions are involved.

ARGUMENT.

The plaintiff in error insisted below and still insists that the issue raised by the third and fourth pleas of set-off is identical with the issue adjudicated in the case of *Belleville and St. Louis Railway Company* (for the use of Edward L. Thomas) v. *Leathe,* 84 Fed., 103, namely, Leathe's personal liability or non-liability under the instrument of March 25 for the debts of the Belleville & St. Louis Railway Company, and that therefore the subject matter of these pleas is *res judicata.* Moreover, the *only* issue in this case in the lower court was that raised by the third and fourth pleas of set-off and that issue having been decided in favor of Leathe in the federal court, the state court should have given full faith and credit in this suit to the judgment of the federal court. This the state court did not do.

The plaintiff in error further contends that, if as claimed by the defendant in error and as held by the Supreme Court of Illinois in its second and final opinion, the judgment in that court was founded, not on the third and fourth pleas, but on the first and second pleas of set-off, then the plaintiff in error has not been accorded due process of law since, as will later more fully appear, no evidence whatever was adduced in support of the first and second pleas; there were no findings based upon those pleas and no trial whatever was had upon them.

In order that the position of plaintiff in error may be clearly apprehended, it is necessary that the Court

have clearly in mind the contract of January 24, on which the second plea of set-off is based, and the contract of March 25 on which the third and fourth pleas of set-off are founded, and the marked difference between them.

First, as to the document of January 24: It will be observed that there is in this alleged agreement no personal obligation whatever on the part of Leathe except to put up the funds required to complete the railway enterprise and to negotiate and sell $500,000 of its bonds. The document is followed by the signatures of all the parties interested. **But it contains no personal obligation on the part of Leathe to pay Thomas anything.** It is simply an agreement *by all the parties to it* with each other that out of the proceeds of the bonds they are each to be repaid the several amounts of their advancements. But it expressly provides that the advancements of Leathe shall be repaid before any payment is made to the others. Before Thomas or any of his colleagues could establish their right to any part of the proceeds of the bonds, it was necessary not only that Leathe should first be paid his advancements, but that the amount of his advancements should be ascertained and agreed upon. The amount to be paid to Thomas was to be adjusted "as per statement rendered."

Second, as to the document of March 25: It was of a different character altogether. It does not bear the signature of Leathe. Nor does it contain any affirmative undertakings on his part of any kind. The history and purpose of this document may be told in a few words.

There existed at that time an old legislative charter to the "Belleville City Railway Company," which contained some features supposed to be of special value. (Rec., 73.) Thomas and his brother had persuaded Leathe that it would be well to abandon the statutory charter issued to the Belleville & St. Louis Railway Company and to operate under this old legislative charter. It is agreed on all hands that the suggestion of the conveyance of the assets of the Belleville & St. Louis Railway Company to the Belleville City Railway Company through Leathe as a channel of conveyance was the suggestion of Thomas and his brother, both of whom were attorneys and both of whom recommended that course to Leathe. The brother, Charles W. Thomas, actually prepared the document of March 25, (Rec., 75) and he admits that Leathe had very little confidence in him thereafter. (Rec., 86.) The defendant in error, Edward L. Thomas, not only executed it for the railway company as its president, but he caused it to be ratified by all its stockholders by himself signing their approval to it as their proxy.

But Leathe, accepting their judgment and relying on their good faith, permitted the deed of March 25 to be made to him. *On the same day and at the same time and as a part of the same transaction he reconveyed the assets received under the document of March 25 to the Belleville City Railway Company.*

It will be observed that the deed is in consideration of $1 and "other valuable considerations to it from him moving." The claim of Thomas is that buried

and concealed under this phrase was the promise of Leathe personally to pay Thomas the amount owing to Thomas by the Belleville & St. Louis Railway Company. **So that, although Leathe was a mere conduit for the conveyance of the assets of one railway company to another railway company, and at the instant of receiving title conveyed it away again, the result, as Thomas claims, was to fasten upon Leathe a personal obligation to pay Thomas the large claim that the latter had against the railway company.**

The two contracts are wholly inconsistent with one another. A suit against Leathe on the contract of January 24 would have to rest on the theory that Leathe after the repayment of his own advancements to the railway company held the balance of the *proceeds of the bonds* as a trustee to repay the advancements made to the company by the others. He could not be required to pay out *his own* money to any of them. His alleged agreement under the document of March 25 was wholly personal. It involved his own funds and had no relation to the proceeds of the bonds.

I.

THE ISSUE RAISED BY THE THIRD AND FOURTH PLEAS OF SET-OFF IS RES JUDICATA.

The issue raised by the third and fourth pleas of set-off is the same issue which was tried in the case of *Belleville & St. Louis Railway Company* (for the use of Edward L. Thomas) v. *Leathe*, 84 Fed., 103, namely, the personal liability or non-liability of Leathe for the debts of the railway company.

The action brought by Thomas in the name of the railway company for his use was tried upon a declaration of two counts, another count having been dismissed upon Thomas' motion. The substance of these two counts (Rec., 514-516), is as follows:

That the consideration of the deed of March 25, 1893, which deed Leathe accepted, was One Dollar and "other valuable considerations" moving from Leathe to the railway company; that the "other valuable considerations" was the promise of Leathe then made that he would satisfy and pay the indebtedness of the railway company to divers parties; that the railway company was then indebted to Thomas in the sum of $60,000 of which Leathe had full notice; that the indebtedness to Thomas was part of the indebtedness which Leathe agreed to pay as part of the consideration for said deed to him; that Thomas had reduced said indebtedness against said company to a judgment of $53,022.33, of which Leathe had notice; that said judgment is in full force and effect and has not been paid and that Leathe had promised to pay it for the consideration aforesaid.

Now, as already stated (*Ante*, 7, *et seq.*) the third and fourth pleas of set-off were founded solely on the instrument of March 25, and the only question put in issue by those pleas was whether or not Leathe by reason of that conveyance or contract became personally liable for this debt of the railway company; so that the exact identity of the issue raised in that action and those presented by the third and fourth pleas on this record is therefore established, and, is, in fact, not now controverted by Thomas.

As already indicated (*Ante*, 6) Thomas failed in that case, because, as held by the court, the personal liability of Leathe was not an issue in the former suits in the Circuit Court of St. Clair County already adverted to (*Ante*, 5) and since Thomas relied wholly on the record in these St. Clair County suits to establish Leathe's personal liability to pay the debts of the Belleville and St. Louis Railway Company, or its successor, the Belleville City Railway Company, he therefore failed to make out a cause of action.

It is scarcely necessary to add that even assuming that Thomas might have made out a case of personal liability against Leathe in the federal court by introducing evidence other than the transcripts of the judgment and of the decree in the proceedings frequently referred to above, yet having elected to rely wholly on the records in the former proceedings, the judgment against him and in favor of Leathe is *res judicata*, not only as to the evidence adduced but also as to all other matters which might have been introduced in evidence. As is well said in the dissenting opinion below "a plaintiff cannot try his case by piecemeal."

Hand, J., (with whom concurred Cartwright, C. J.,) discusses this last point in a very apt manner. He says (p. 267) in part:

> "The fact that the plaintiff in the case in the United States Circuit Court failed to prove by sufficient or competent evidence that the defendant promised to pay to him the debt of the Belleville and St. Louis Railway Company, and judgment was rendered in favor of the defendant by reasons of the failure to make such proof, did not leave that question an

open one, subject to be re-tried in another suit. A plaintiff cannot try his case by piecemeal. In the case at bar the defendant in error submitted the proof of the alleged parol promise of the plaintiff in error to pay the debt due him by the Belleville and St. Louis Railway Company, and that said debt was included within the provision 'other valuable considerations to it from him moving,' contained in the deed of March 25, 1893. Under the declaration on file in the case in the United States Circuit Court, the question of the promise of the plaintiff in error to pay said debt and that the same fell within the said provision contained in said deed was put in issue by the plea filed in that case, and the same evidence would have been material and admissible there. The defendant, however, saw fit to rely upon the record evidence only and in this case he is bound by the record made in that case."

"The doctrone of *res judicata* embraces not only what has been determined in the former suit, but also extends to any other matters properly involved and which might have been raised and decided in that suit."

The learned judge quotes the following language from the *Town of Beloit* v. *Morgan*, 7 Wall., 619:

"The principle of *res judicata* reaches farther. It extends not only to the questions of fact and of law which were decided in the former suit, but also to the grounds of recovery or defense which might have been, but were not, presented."

In *Beloit* v. *Morgan, supra,* at page 622, the Court, speaking by Mr. Justice Swayne quoted with approval from *Henderson* v. *Henderson,* 3 Hare, 115, as follows:

"In trying this question I believe I state the rule of the court correctly that where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to bring forward

their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as a part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to the points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time."

See, also, to the same effect,

Gould v. *Evansville, etc., R. R. Co.*, 91 U. S., 526, at page 533.

II.

THIS COURT HAS JURISDICTION TO INQUIRE WHETHER FULL FAITH AND CREDIT AND FULL FORCE AND EFFECT HAVE BEEN GIVEN TO THE JUDGMENT OF THE FEDERAL COURT; IN DETERMINING THIS QUESTION THE COURT MAY EXAMINE THE ENTIRE RECORD.

The writer is familiar with the rule of law repeatedly recognized in the decisions of this Court, that when a federal question is suggested on the record and is decided by the state court in favor of him who claims under it, the latter has no grounds for appealing to this Court. He is also familiar with the rule of law of equal authority in the decisions of this Court that where a federal question is raised and is decided adversely to the claimant, but the judgment of the state

court is based upon some other ground not of a federal character, this Court will not disturb it. And both of these principles of law are invoked by Thomas. He claims (1) that the federal question raised by Leathe was decided by the lower court in accordance with the contention of Leathe; and (2) that the lower court decided the case in his favor "upon questions of general law which are not subject to review by this Court." In other words, he says that the lower court held that the federal judgment was a bar to the cause of action set up in the third and fourth pleas, and therefore that a judgment in his favor on those pleas could not be sustained. But he asserts that the judgment was rendered by the lower court, under the first and second pleas, on the contract of January 24, to which the federal judgment was not a bar, and that the record therefore presents no federal question, but only "questions of general law not subject to review by this court."

All this, so far as it is a mere theory of law, is familiar to the bar generally. But it is assumed that rights acquired under a federal judgment are substantial rights which this Court will guard and protect. It is assumed that when a federal court has, by its final judgment, disposed of a controversy, the person in whose favor the judgment was so rendered may confidently rest upon it as giving him a substantial and practical immunity from further prosecution on the same subject-matter. No mere *ipse dixit* of the state court will be allowed to deprive a litigant of the benefits acquired under the judicial action of a federal court. Conceding the largest measure of finality to the rulings of state courts on questions of pleading,

practice and procedure and of local and general law, this Court, it is assumed, will nevertheless not submit to the proposition that a state court may say that a judgment which on the face of the record was rendered on one contract or cause of action which is barred by a federal judgment, was or may be held by the state court to be a judgment on another contract which is not barred by a federal judgment. **In other words, it is assumed that this Court will not be controlled by the mere surface appearance of things as created by the opinion of a state court, but, in the protection of rights acquired under a federal judgment, will look into the substance of things and ascertain their real character.**

This Court has decided that the question whether a state court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States and comes within the jurisdiction of this Court. In *Crescent Live Stock Co.* v. *Butchers, &c., Co.*, 120 U. S., 141, the question arising upon the record for the consideration of this Court was whether the Supreme Court of Louisiana in its determination of the case gave due effect to a certain decree of the Circuit Court of the United States for the Eastern District of Louisiana, in a previous litigation between the same parties. The Court, speaking by Mr. Justice Matthews, at page 146, said:

> "It is argued by counsel for the defendant in error that this does not embrace any federal question; that the effect to be given to a judgment or decree of the Circuit Court of the United States sitting in Louisiana by the courts of that state is to be determined by the law of Louisiana or by some principle of general law as to which the de-

> cision of the state court is final; and that the ruling in question did not deprive the plaintiffs in error of 'any privilege or immunity specially set up or claimed under the Constitution or laws of the United States.' But this is an error. The question whether a state court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States, and comes within the jurisdiction of the federal courts by proper process, although, as was said by this court in *Dupasseur* v. *Rochereau,* 21 Wall., 130, 135, 'no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such a case, under such circumstances, than is due to the judgments of the state courts in a like case and under similar circumstances.' *Embry* v. *Palmer,* 107 U. S., 3. It may be conceded, then, that the judgments and decrees of the Circuit Court of the United States, sitting in a particular state, in the courts of that state, are to be accorded such effect, and such effect only, as would be accorded in similar circumstances to the judgments and decrees of a state tribunal of equal authority. *But it is within the jurisdiction of this court to determine, in this case, whether such due effect has been given by the Supreme Court of Louisiana to the decree of the Circuit Court of the United States here drawn in question.*"

The plaintiff in error is not here contending for a construction or a ruling by this Court differing from that of the state court on any matter of pleading, practice or procedure or of local or general law presented by this record. **He contends only that this Court is as competent as any other court, to see what appears on the very face of this record.** When the lower court says, as it does, (pp. 255-6), that the "findings of the Circuit and Appellate Courts are con-

clusive that the evidence sustained the first and second counts of the declaration" and thus deprives the plaintiff in error of the benefit of a federal judgment, **it is contended that this Court is competent to look at the record and to see whether on its face there is any such finding there.** When the lower court says, as it does (p. 256), that "we have no means of determining on this record that the first and second pleas are not treated as presenting substantial issues in the case," and thus deprives the plaintiff in error of the results of a judgment awarded to him by a federal court, **it is contended that this Court may look at the record and see whether on its face it does not appear at a glance that the first and second pleas, of set-off were treated as not presenting substantial issues in the case.**

The law is well settled that this Court, when necessary to a correct understanding of the merits of a controversy brought to it on appeal or writ of error, will examine the entire record, including even the evidence introduced below.

In *Washington Gas Co.* v. *District of Columbia,* 161 U. S., 316, the court, speaking by Mr. Justice White, at page 329, said:

> "The elementary rule is, that for the purpose of ascertaining the subject matter of a controversy, and fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit, may be examined. *Russell* v. *Place,* 94 U. S., 606, 609, 610; *Cromwell* v. *County of Sac,* 94 U. S., 351, 355, 356; *Lewis* v. *Ocean Navigation & Pier Co.,* 125 N. Y., 341, 348; *Littleton* v. *Richardson,* 34 N. H., 179, 188; Freeman on Judgments, Sec. 273, and the authorities there cited."

If, then, this Court finds *on the face of the record*

that the defendant in error himself denied even the existence of the contract of January 24, and that the referee took the same view, and that the appellate court supported the view of the referee, and that all this appears *on the face* of the record where any one may see it without resorting to construction, it would seem that this Court, in the protection of rights acquired under a federal judgment, may say whether the statements of the lower court are not shown on the very face of the record to be incorrect.

It may be said also in passing, that when the learned counsel for defendant in error says that the lower court decided the federal question in favor of the contention of Leathe, this Court is competent to look at the opinion of the lower court and to see that, on the contrary, the lower court decided (pp. 253,254) the federal question against the plaintiff in error. The State Supreme Court expressly puts itself on the decision of the appellate court as to that question and says (p. 254), that the appellate court "cons d and decided that question." The appellate court did consider and decide the federal question, but it decided it against the plaintiff in error.

The appellate court at page 456 said:

> "It is clear from this reference to the finding of the United States Court, that there was no adjudication in that court upon the issue as to whether Leathe promised to pay the debts of the Belleville & St. Louis Railway Company, as a consideration for the property conveyed by said deed. There is nothing in the opinion or judgment of the United States Court that decides any question now litigated. There was no error, then, in overruling the exception to the referee's report, because it

failed to find that the claim made, that Leathe absolutely promised to pay the debts of the Belleville & St. Louis Railway Company, had been adjudicated in favor of Leathe." *Leathe* v. *Thomas*, 109 Ill. App., 434.

Moreover, that court, as can be seen *on the face of its opinion*, sustained the judgment of the trial court as a judgment under the contract of March 25, that is, as a judgment under the third and fourth pleas only.

Under Section 16 of Chapter 37, Hurd's Revised Statutes of Illinois (1905) justices of the supreme court are required, in cases submitted to it, to deliver and file written opinion. It is also provided that "such opinions shall also be spread at large upon the records of the court." The opinions of the Supreme Court of Illinois are therefore properly a part of its records, and it has been so held by this court.

Gross v. *U. S. Mortgage Co.*, 108 U. S., pp. 477, 486.

See, also:

National Foundry, etc., Works v. *Oconto, etc., Co.*, 183 U. S., 216, 234.

III.

FULL FAITH AND CREDIT AND FULL FORCE AND EFFECT HAVE NOT BEEN GIVEN TO THE JUDGMENT OF THE FEDERAL COURT.

The *only* question at issue in this case in the lower court was the issue decided in Leathe's favor in the federal case above mentioned, namely, his liability or non-liability under the instrument of March 25, 1893,

to pay the debts of the Belleville and St. Louis Railway Company, and this being true **it follows that full faith and credit and full force and effect have not been given to the federal judgment.**

It is necessary to a correct understanding of this contention that the evidence introduced before the referee and the matters considered and determined in the several state courts of Illinois be reviewed.

(a) *The evidence introduced before the referee.*

Although it is not proposed to analyze the testimony at this time, a brief reference to some of it may emphasize the fact that Thomas was relying exclusively upon the contract of March 25; that the referee's findings were solely upon that contract; that the trial court entered its judgment upon it, and that the appellate court did likewise.

Charles W. Thomas, brother of defendant in error, says that he drew up the deed of March 25 and that the "consideration of that deed where not expressed," was Leathe's promise to pay the company's debt; this was perfectly understood. (Rec., 75.) Referring to the document of January 24, he says that he told Leathe that under all the circumstances he did not think it possible of execution and that Leathe agreed with him. (Rec., 77.) But Thomas says that in some respects it formed the "basis of a new contract" of March 25. (Rec., 77.)

Edward L. Thomas, the defendant in error, on cross-examination, referring to the document of January 24, says (Rec., 126):

"There was nothing done under that agreement

directly * * *. **My own individual evidence is that the agreement is not in force and never was in force. * * * I claim generally on the theory that he (Leathe) agreed to pay the money for this conveyance to him.** (Rec., 129.) There was an abandonment by all of us of everything that had been done in regard to contracts or agreements or arrangements **and an entirely new one was made.** * * * We simply said that the old contract had no application to the new matter. A new contract would have to be entered into. And thereupon we went on and talked and several propositions were made and were rejected **and finally one was made** that was carried out on the 25th day of March."

Referring again to the document of January 24 and his signature attached to it, defendant in error says (Rec., 134):

> **"The whole matter was abrogated on March 25. We did not carry anything of that kind out; the whole thing was abrogated."**

This is a statement by Thomas himself. Referring again to the document of January 24, defendant in error says that he did not do the things that he agreed to do at the foot of that agreement. (*Ante*, 1.) He asserts that (Rec., 134):

> **"It was the same road we intended to build but it was not built under the contract of January 24 nor was it built under the same name. That contract was entirely new and a distinct contract; made along different lines."**

When his attention was called to the second plea in which the contract of January 24 was set up (Rec., 136), he said:

> **"I do not say that that is the contract existing between the parties or that is ever existed between them."**

Chipley, one of the persons who signed the contract of January 24, was asked (Rec., 493):

"Q. Now, then, this contract of January 24, was it or was it not ever in force between the parties.

"A. That is the original; no sir. That never was in force."

Thomas was the moving party. It rested with him to make the issues in the case and to assert and prove his demand either under the contract of January 24 or March 25. Leathe could not make the issue for him. Here then was Thomas, as shown by his own testimony, denying even the existence of the contract of January 24, and therefore denying that any such issue was in the case. Leathe, on the other hand, as shown by the referee's report, was rather in the attitude of saying that their relations were controlled by the contract of January 24. One of Leathe's exceptions to the findings of the referee (Rec., 60) was that he had failed to find that the relations between himself and Thomas were governed by the contract of January 24. Leathe also excepted because the referee *had* found that their relations were governed by the contract of March 25.

In the face of this attitude of the parties and of the very definite character of the finding of the referee against the contract of January 24 and the express finding that the relations between the parties were governed by the contract of March 25, it is not difficult to understand why in this very important case, involving a large sum of money, the lower court in a *per curiam* opinion first held that the only issue in the case was that raised by the third and fourth pleas of set-off and that that issue was *res judicata*. It is difficult,

however, to understand how, even in a *per curiam* opinion, the lower court could possibly assert, as it did in its final opinion, that the "findings of the circuit and appellate courts are conclusive in this case that the evidence sustained the first and second counts of the declaration." In this connection this Court will not fail to observe the statement of the dissenting justices below (218 Ill., at p. 266):

> **"No evidence was introduced to sustain either the first or second plea filed by the defendant in error and the recovery was had under the third and fourth pleas as clearly appears from the report of the referee referred to in the majority opinion."**

The appellate court, referring to Leathe and the contract of March 25, among other things to the same effect says (109 Ill. App., at p. 464):

> "It is fair to assume that, with counsel present to advise him and having had the matter under consideration for some days before March 25, *he believed that it was to his advantage to enter into the agreements that were then made.*"

(b) *Findings of the Referee.*

This case was referred to a referee with directions to take and hear all the evidence offered by either party and to report to the court such evidence together with his findings of fact and conclusions of law. (Rec., 41.)

The referee in his finding of facts after a brief statement of the relations between the parties, refers to the document of January 24, 1893, and says that it was not signed at the time by Leathe, though still retained in his possession. He then says (Rec., 56):

"A few weeks later matters culminated in the agreement generally referred to as the agreement of March 25, 1893."

Leathe was claiming to be acting under the document of January 24; but the referee, after stating (Rec., 57) that the evidence does not show that he was, then finds:

"There is a clear preponderance of the testimony to the effect that the plaintiff agreed, as a consideration of the conveyance to him of the property and assets of the Belleville and St. Louis Railway Company, to pay the debts of that company, the amount of which debts the evidence shows they knew."

This agreement by Leathe to pay the debts of the company is the issue, as has been shown, only of the third and fourth pleas. *It was the "other valuable consideration," as Thomas claims, under the deed of March* 25.

Then follows a statement by the referee of the action brought by Thomas against the railway company "to establish the amount of the company's indebtedness to him," and that Mr. Leathe was notified to defend this suit if he wished to do so and that he did interpose a defense. The referee then finds that judgment was rendered in that action in favor of Thomas for $53,022,23, which is still in full force; and (Rec., 58) that this judgment "represents an indebtedness which the undersigned (**the referee**) **holds the plaintiff promised to pay as a part of the consideration of the deed to him of March 25, 1893.**"

Immediately following this definite and very important finding of fact is the referee's "Conclusion of Law," as follows (Rec., 58):

"The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff **for the amount of said judgment.** (*i. e.*, against the railway company in favor of Thomas), and interest thereon less the amount of plaintiff's said judgments (*i. e.*, in the Missouri court) against defendant and interest thereon.

Defendant's judgment, Dec. 21, 1893		**$53,022.23**
Int. Jan. 11, 1902, 8 yrs. 30 days, 5%		21,356.17
		$74,378.40
Deduct plaintiff's judgments:		
Judgmt. Mar. 5th, '96	$2,278.63	
Int. on 337.27 8%, 5 yrs. 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgmt. Jan. 5th, '97	923.75	
Int. 6%, 5 yrs. 6 days	278.04	4,319.65
		$70,058.75

For which judgment is recommended in favor of defendant Edward L. Thomas."

Not one of the various elements necessary in order to enable Thomas to recover under the contract of January 24, is the subject of a finding by the referee or is in anywise mentioned or discussed by him. To support a judgment on that contract it was obviously necessary for Thomas to prove and the court to find:

1. That the proceeds of the sale of the bonds came into Leathe's hands and that he was therefore chargeable therewith as trustee to repay the advancements of himself and the other parties to the contract of January 24.

2. That Leathe's own advancements had first been repaid to him as provided in that contract.

3. That there was a balance left in his hands with

which to satisfy, in whole or in part, the advancements of Thomas and his colleagues.

Nothing therefore can be more certain than that the referee expressly found for Thomas on the document of March 25. He limited his findings, in other words, to the cause of action set up in the third and fourth pleas of set-off. The closest scrutiny of his findings of fact or conclusions of law cannot discover that any other thought was in the mind of the referee.

The exceptions of Leathe to his report were overruled by the referee. One of these exceptions was that he had failed to find that the relations between the parties were controlled by the contract of January 24 (Rec., 60); and all of them are directed against the referee's finding that a new promise was made on March 25 "superseding the contract of January 24." (Ex. No. 4; Rec. 61.) These exceptions were renewed in the trial court and were again overruled. The report was thereupon approved and judgment rendered thereon in favor of Thomas and against Leathe for $71,226.37, being the amount for which the referee recommended judgment with interest from the date of filing his report, February 13, 1902, to the date on which judgment was entered on June 30, 1902. (Rec., 51.)

The report definitely shows that Thomas was before the referee claiming under the contract of March 25, and that the referee found on the "clear preponderance of the testimony" that Leathe had contracted exactly as alleged in the third and fourth pleas of set-off. The referee seems to have treated the matter as if the issue before him were between the two contracts.

And he expressly finds that the testimony adduced does not show that Leathe was acting under the contract of January 24, and that it does show by a "clear preponderance" that he did enter into the contract of March 25 as alleged by Thomas. It thus appears clearly and definitely that the judgment entered in the trial court on the referee's report was a judgment for recovery by Thomas under that contract. In other words, **it appears affirmatively that the judgment was based solely upon the third and fourth plea of set off to which the federal judgment has been properly pleaded in bar and not in any respect upon the first and second pleas.**

(c) *Holding of the Trial Court.*

The trial court, as above stated, adopted the finding of the referee and gave judgment for Thomas on the third and fourth pleas of set-off.

(d) *Holding of the Appellate Court.*

The case next went to the Appellate Court of Illinois upon a writ of error. (*Leathe* v. *Thomas,* 109 Ill. App., 434.) That court is empowered to review the findings of fact made below. Hurd's Revised Statutes of Illinois (1905), Chap. 110, Sec. 88. But the appellate court chose to adopt the report of the referee and to affirm the judgment of the trial court.

The court, at p. 457, said:

> "The important issue of fact in this case is, what was understood by 'other valuable considerations' in the deed from the Belleville & St. Louis Railway Company to appellant, and whether, as a part of said consideration, appellant agreed to pay the debts of said company."

Again, at page 459, the court said:

> "This difference [between the agreements of January 24 and March 25] presents an issue of fact which must be determined from the evidence of witnesses bearing directly upon the issue considered in connection with attendant circumstances that are disclosed by the testimony. In passing upon this issue of fact, the finding of the referee who was appointed by the court with the consent of both parties, and who saw and heard the witnesses, is entitled to the same consideration as the verdict of a jury. *Butler* v. *Cornell,* 143 Ill., 276; *Butler* v. *Randall,* 25 Ill. App., 586; *Story* v. *DeArmond,* 77 Ill. App., 74.
>
> **The referee found that a part of the consideration of the deed of March 25th, of the Belleville & St. Louis Railway Company to appellant, was that appellant should pay the debts of the railway company."**

Again, at page 465, the court said:

> "It may be said in addition that the *ad damnum* in the fourth plea of set-off, **that being the plea on which the referee found for appellee, and upon which judgment was rendered, was $65,000. On this plea the referee found that appellant owed to appellee the amount of the judgment of December 21, 1893, for $53,022.23. Upon this interest was allowed in the sum of $21,356.17."**

(e) *Holding of the Supreme Court.*

The case then went upon a writ of error to the Supreme Court of Illinois. Under the law of Illinois the jurisdiction of its Supreme Court upon a writ of error is confined to a consideration of questions of law. (Hurd's Revised Statutes of Illinois (1905), Chap. 110, Sec. 90.) *It cannot under the law, make new findings of fact.*

The Supreme Court in a unanimous opinion first reversed the judgment and held that that the federal judgment in favor of Leathe was a bar to this new action against him by Thomas. The court in this first opinion summed up its deliberations with the following concluding paragraph (Rec., 1301):

> "From an examination of this record we have been forced to the conclusion that the Circuit and Appellate Courts erred in holding that the judgment of the Circuit Court of the United States was not a bar to defendant in error's right of recovery in this case under the pleas of set-off filed by him, as *we think it apparent the question whether or not the plaintiff in error agreed to pay to defendant in error the debt due him by the Belleville & St. Louis Railway Company was in issue in that case and was decided therein adversely to the defendant in error,* and that that judgment was a final judgment upon the merits and binding upon the defendant in error, and is *res judicata* of the question presented by said pleas of set-off."

Upon a re-argument of the case on petition for rehearing the lower court reversed its conclusions as thus expressed and affirmed the judgment against Leathe. Although it was first clearly of the opinion that the federal judgment was a bar to the claim of Thomas in this case, in its second or final opinion it disposes of the case by saying that in its first opinion it had "inadvertently overlooked the issues made on the first and second pleas" of set-off, and it therefore affirmed the judgment on the ground that it could be sustained under the first and second pleas. *Leathe* v. *Thomas,* 218 Ill., at p. 254. The court also says (p. 256):

> "We have no means of determining on this rec-

ord that the first and second pleas were not treated as presenting substantial issues in the case."

The statement of a case by a court is as much a part of its opinion as the discussion of the questions of law. In the statement of this case the state supreme court (p. 250), referring to the purpose of the suit by Thomas against Leathe in the Circuit Court of St. Clair County, which was afterwards removed to the federal court and there decided in favor of Leathe, says that it was brought by Thomas to recover the amount owing to him by the railway company on the ground that on March 25, when the assets of the railway company were transferred to Leathe, the latter "agreed to pay the debts of said company including its debt to defendant in error."

Immediately following this statement of the purpose of *that* action the court says, with reference to *this* action:

> **"The claim sought to be set-off in this suit and upon which judgment was rendered in favor of the defendant in error is the indebtedness of the Belleville & St. Louis Railway Company to the defendant in error, and which it is claimed was, in part, the 'other valuable considerations to it from him moving,' specified in the deed from the Belleville & St. Louis Railway Company to the plaintiff in error, and which claim, it is said, the plaintiff in error assumed and agreed to pay."**

The language is that "the claim **sought to be set-off** in this suit and upon which **judgment was rendered,** etc." In other words, the **purpose** of this suit was to recover against Leathe under the contract of March 25. **The very object and subject-matter** of the action, as thus stated by the lower court itself, was

the alleged agreement of Leathe in the deed of March 25th to pay Thomas what the company owed him. That was the issue between the parties. It is so stated by the state supreme court. The referee, the trial court and the appellate court all so understood it. And immediately preceding that statement of the issue in *this* case is the court's own statement of the issues in the prior case in the federal court. The two issues are identical. And no amount of sophistry or explanation can distinguish them.

The identity of the subject-matter of this proceeding in which judgment was rendered for Thomas and against Leathe with the subject-matter of the action in the federal court in which judgment was rendered for Leathe and against Thomas is thus clearly established and definitely appears on the very face of the final opinion of the state supreme court. *It is this exact identity of the issue in the two cases that led the lower court in its first opinion to apply the principle of res judicata.*

The above statement by the state supreme court of the *purpose* and *object* and *subject-matter* of this case it is earnestly contended, is binding upon this Court and requires it, in the protection of the federal judgment in favor of the plaintiff in error, to apply the principle of *res judicata.* If the *object* and *subject-matter* of this suit are the same as in the case in the federal court, this Court, in order to arrive at substantial justice and to give to the plaintiff in error the substantial and effective results of his federal judgment so that it may not be wholly nugatory, will not permit the supreme court of the state in defiance

of the facts obvious on the face of the record and without a finding or trial, to sustain the judgment on the first and second pleas based on the contract of January 24.

IV.

PLAINTIFF IN ERROR HAS NOT BEEN ACCORDED DUE PROCESS OF LAW.

If, as claimed by defendant in error and as said by the Supreme Court of Illinois in its final opinion, the judgment in this case was predicated wholly on the first and second pleas of set-off, the plaintiff in error has not been accorded due process of law, since no trial whatever has been had upon the issues raised by the first and second pleas of set-off. This seems to be a clear and plain proposition and a brief statement will, it is thought, put it beyond the range of controversy.

Here is a declaration in set-off that counts upon two distinct contracts, one of January 24 and one of March 25. These contracts, as heretofore shown, were not only made under different circumstances, at different times, and in the presence of different witnesses, and to meet different conditions, but they are, so far as Leathe's alleged obligations under them are concerned, absolutely contradictory. The evidence adduced to prove the contract of March 25 would not suffice to support the contract of January 24. So, on the other hand, the evidence in support of the contract of January 24 would not be sufficient to uphold the contract of March 25. The essential pur-

pose of the two agreements was different. The earlier contract involved no personal responsibility on the part of Leathe. He simply joined with others in the formulation of an understanding, by which each of the parties was to receive the amount of his own advancements, not from Leathe, but out of the proceeds of the company's bonds. This understanding was subject to the condition that Leathe should receive his advancements before the others were entitled to receive any portion of their advancements.

If Leathe could be charged with liability in any event under that document of January 24, it could be only on the ground that the proceeds of the sale of the bonds had come into his hands and that he held the funds as trustee to carry out the arrangement embodied in the document. And such a proceeding would require, before judgment could be entered upon it against Leathe, an accounting showing the amount of the advancements by each of them, including Leathe. And in case, after Leathe had been repaid his advancements in full, the balance were not sufficient to pay the other parties to the agreement there would have to be some equitable distribution of the balance among the others. The special point to be observed is, that under that agreement one party to it could not bring a suit against Leathe in his personal capacity, but only as a trustee of the proceeds of the bonds; and one party could not demand the full payment of his special advancements without *pleading and proving* that Leathe had been fully repaid his own advancements and showing also that the balance in Leathe's hands was sufficient fully to cover

the advancements of *all* the other parties to the contract. No judgment against Leathe could be entered on that contract without some finding by the court, jury or referee that Leathe had been repaid his advancements in full. There is no such finding on this record either by the referee or the court, nor any evidence upon which such a finding could have been based. Nor could there be any judgment against Leathe and in favor of Thomas without some finding by the court, jury or referee that there were funds in Leathe's hands out of the proceeds of the bonds sufficient to repay Thomas after Leathe himself had been repaid. But there is no such finding and no evidence to such effect. How, then, could a judgment be entered herein on the contract of January 24?

On the other hand Leathe's alleged obligation under the deed of March 25th had no relation to the sale of the bonds of the company. Whether they were sold or not and without regard to whether Leathe's advancements to the railway enterprise had been first repaid or not, he was under a positive liability, as the alleged promise is asserted by Thomas, to pay Thomas out of his personal funds the full amount of the debt due him by the railway company.

The two documents therefore involve entirely different causes of action, although embraced on this record within the one declaration. Upon each document Thomas could have brought a separate action. Both causes of action were submitted under the declaration to the referee. **He found for the claimant expressly upon one cause of action. He made no finding of any kind upon the other cause of action.** It is as-

sumed, from what has already been said of his report, that this is too clear and plain on the very face of the report, as well as from the subsequent proceedings in the case, to admit of any controversy. *His report was the only finding in the case and it was limited to the cause of action set up by Thomas under the contract of March* 25.

It therefore follows that whether his report be considered as the equivalent of a finding by the court itself or whether it be considered as having the force of a verdict by a jury, it is nevertheless a finding or a verdict upon the one cause of action. And it is expressly so stated. It makes no difference whether that cause of action is in the form of a separate action or of a separate count. The report cannot by any process of reasoning be deprived of its character as a finding or verdict expressly and specifically upon a distinct cause of action. It therefore can support a judgment on that cause of action only. There has been no finding express or general and no verdict of any kind upon the other cause of action. There is therefore nothing to support a judgment on the cause of action under the contract of January 24. And without attempting or venturing to give an adequate definition of due process of law, it may be assumed that, *in order to satisfy that fundamental constitutional requirement, a party must be entitled to have some sort of finding, upon the claim made against him or upon his defense to the claim upon which a judgment may be predicated and properly entered respecting such claim.*

There was no such finding in this case as to the contract of January 24, either by the referee or by the

trial court. And there can be no pretense that there was. Thomas himself had repudiated the existence of the contract of January 24. The referee's report is limited absolutely to Thomas' claim under the contract of March 25. There was no rehearing of the matter in the trial court or any new findings by that court. The exceptions to the referee's report were overruled by the trial court. The report was then approved and judgment entered by the trial court against the plaintiff in error *on the referee's report.* A finding or verdict expressly based on the contract of March 25 will not enable the court to predicate upon such finding a judgment on the contract of January 24. This is not due process of law.

The judgment of the trial court was taken by writ of error to the appellate court. *Leathe* v. *Thomas,* 109 Ill. App., 434. That court says (p. 457):

> "**The important issue of fact in this case is** what was understood by 'other valuable considerations' **in the deed from the Belleville & St. Louis Railway Company to the appellant,** and whether as a part of such consideration, appellant agreed to pay the debts of said company."

In other words the issue is the claim of Thomas under the contract of March 25. The court then says (p. 459):

> "In passing upon this issue of fact **the finding of the referee,** who was appointed by the court with the consent of both parties, and who saw and heard the witnesses, **is entitled to the same consideration as a verdict of the jury.**"

The court then reviews the evidence addressed to the particular cause of action embodied in the third and fourth counts. It does not discuss the other cause

of action. In other words, it sustains the demand of Thomas under the contract of March 25. It makes no finding and reaches no conclusion whatever as to the claim of Thomas in the first and second pleas of set-off under the contract of January 24. All this is apparent upon the very face of the opinion of the court. And in order to sustain the judgment of the trial court as a judgment on the third and fourth pleas,—a judgment on the contract of March 25—the appellate court was compelled to and did decide that the federal judgment was *not* a bar to those pleas. (109 Ill. App., 456.)

The case then went to the Supreme Court of Illinois upon a writ of error. The jurisdiction of that court is limited by law to the consideration of questions of law. It makes no finding of facts. The sole question of law properly before it in this case was whether the prior judgment in the federal court was *res judicata* as to the claim of Thomas in this action under the third and fourth pleas.

It is manifest that the referee considered only the cause of action presented by the third and fourth pleas and made no finding under the first and second pleas. It is equally clear that the trial court expressly based its judgment upon the report of the referee and its approval of it and therefore solely upon the cause of action set forth in the third and fourth pleas. And the appellate court, having by law the right to review the evidence, based *its* judgment upon the report of the referee giving to it the effect of a verdict of a jury, and upon its own review of the testimony addressed to the cause of action set up in the third and fourth pleas.

Nevertheless the supreme court entered an order of affirmance sustaining the judgment under the *first and second pleas,* **without any previous finding by the referee or by the trial court or by the appellate court upon the cause of action set up in the first and second pleas.**

Up to that point the judicial machinery of the state had acted only with respect to Thomas' cause of action, set up in the third and fourth pleas, under the contract of March 25. The sole question before the supreme court therefore was whether the doctrine of *res judicata* applied to the cause of action set up under the third and fourth counts. And to that question the first opinion of the supreme court of the state was addressed. It held that the doctrine did apply and that the federal judgment was a bar to the claim set up in those two pleas. All that it could lawfully do then was to set aside the judgment rendered on that claim or cause of action and to remand for trial the unadjudicated cause of action under the first and second pleas. Instead of doing that it rendered judgment on it. It was only in its second or final opinion that the judicial machinery of the State of Illinois first touched the claim or demand, or cause of action of Thomas under the contract of January 24. The supreme court passed upon it then without any finding by a referee or a verdict by a jury or a finding by a court authorized by law to make a finding of fact and to pass upon the testimony adduced by the parties.

It is earnestly insisted that this is not due process of law.

At the close of the opinion, the lower court (p. 257) in upholding its judgment on the *second* plea of set-

off, seems to make some point of the fact that Leathe had not pleaded the federal judgment in bar of the cause of action set up in the second plea of set-off, which was based on the contract of January 24, and of the fact that it was not denied below by Leathe, as manifestly it could not be, that the federal judgment was not a bar to the cause of action set up in the second plea of set-off. The lower court also states at the same point that on the argument it was admitted that Thomas had the right to an accounting under the contract of January 24. This may now again be admitted. But this Court will understand the force and effect of the admission, as the lower court certainly did not. If the federal judgment was based, as clearly it was, on the alleged contract of March 25, manifestly it could not be asserted by Leathe that the federal judgment was a bar to an action on the contract of January 24. Leathe therefore properly admitted that it was not a bar to an action on that contract. But he also asserted that Thomas could recover against him under the contract of January 24 *only upon an accounting*, showing:

1. That the funds from the sale of the bonds had come into Leathe's hands.

2. That the full amount of Leathe's advancements to the railroad company had been repaid as that contract provided.

3. That after such repayment to him there was a sufficient balance of the proceeds of the sale of the bonds to satisfy in whole or in part the claims of Thomas and his colleagues.

Such an accounting has not been had. There

has been no pretense of an accounting. This record is bare of any finding by jury, referee or court that the funds from the sale of the bonds did come into Leathe's hands, that Leathe's advancements have been repaid or that there remains a sufficient balance of such funds to satisfy in whole or in part the claims of Thomas and his colleagues. Without such findings either by a jury, a referee or by some court other than the supreme court, which is not authorized by law to make original findings of fact, no judgment against Leathe could be predicated upon the contract of January 24. *But regardless of the absence of such a finding by jury, referee or court, and in the face of a finding both by the referee and my the appelate court against the contract of January 24 and for the contract of March 25, the supreme court has entered a judgment against Leathe on the contract of January 24. There has been no trial of that issue.*

In this connection attention is called to the statement of the lower court, citing previous adjudications by it, that (p. 256):

> "We have held that the finding of the referee is entitled to the same weight and credit as the verdict of a jury."

If the report of the referee herein is to be thus regarded, as it ought to be, as equivalent to the verdict of a jury, it is clearly governed by that clause of the practice act (Hurd's Rev. Stat. Ill. (1905), Ch. 110, Sec. 58c), which provides in relation to verdicts.

> "When the special finding of fact is inconsistent with the general verdict the former shall control the latter and the court may render judgment accordingly."

There is nothing of a general nature in the report of the referee, but if, as seems to be the case with the lower court, any one can see in that report a finding of a general nature, the general finding must be controlled by the special finding. That special finding is that the contract of March 25 controlled the relations of the parties. Judgment could be entered therefore only in support of that special finding, that is to say, only under the third and fourth pleas and not under either the first or second pleas.

The controversy then may be reduced to this:

Here is a case which was tried throughout on one theory and on one set of pleas and upon one contract, and was finally decided in the highest court of the state on another theory and on another set of pleas and upon another contract without any hearing thereon by a tribunal *empowered to hear testimony* and to make findings of fact. The case in this respect resembles *Peoria Gas and Electric Co.* v. *Peoria*, 200 U. S., 48. In that case a bill was filed by the Gas Company to restrain the enforcement of an ordinance passed by the City of Peoria fixing the price of gas. The theory of the bill was that the rate fixed by the ordinance was so low that it practically amounted to taking property without compensation. The case was tried exclusively on this theory. The court denied relief on the ground that the company had violated the anti-trust law of Illinois.

The Court speaking by Mr. Justice Brewer, at page 54, said:

> "This case was tried on one theory and decided on another. While that does not always and

necessarily constitute error, yet, under the circumstances, as disclosed by the record, we are of opinion that injustice has probably resulted and that there should be a reversal of the decree, and a further examination in the Circuit Court."

Now, in the present case, it is perfectly obvious that the case from its inception proceeded under the third and fourth pleas of set-off, and on the contract of March 25, and that the judicial machinery of the State of Illinois touched for the first time the first and second pleas of set-off and the contract of January 24 only on the re-hearing, and then, without any finding or verdict by a referee, or by a jury, or by any tribunal empowered to make findings in the case.

One of two conclusions is irresistible. First, the statement of the Supreme Court of Illinois in its final opinion, that the judgment in this case was based in the first and second pleas or set-off, is a mere *ipse dixit*, and the real basis of the decree was the third and fourth pleas. If this conclusion be true, full faith and credit has not been given to the judgment of the federal court in the case of *Belleville & St. Louis Railway Company* (for use of Edward L. Thomas) v. *Leathe, supra.*

Or, second, if as claimed by defendant in error and as stated by the lower court, the judgment was grounded wholly upon the first and second pleas of set-off, then unless the judgment be reversed by this Court, plaintiff in error will be denied one of the rights guaranteed to him by the Constitution of the United

States,—he will be deprived of his property without due process of law.

The judgment of the lower court should be reversed.

Respectfully submitted.

JOHN MAYNARD HARLAN,
VICTOR KOERNER,
Attorneys for Plaintiff in Error.

For the convenience of the Court, the report of the referee frequently referred to in the foregoing pages has been printed as an appendix. It appears on the original record at pages 53-59.

APPENDIX.

Report of Referee.

State of Illinois, St. Clair County. } ss.

In the Circuit Court,

January Term, A. D. 1902.

Samuel H. Leathe, *vs.* Edward L. Thomas. } Debt.

The undersigned, to whom said cause was referred at a former term of this Court, with directions to take and hear all evidence offered by either party, and to report to the Court such evidence together with his findings of fact and conclusions of law, respectfully reports that he has heard all the evidence offered by the respective parties, and caused the same to be reduced to writing, and such evidence with the exhibits thereto, together with the evidence considered by the undersigned taken before L. D. Turner, Esq., the former Referee in said cause, he submits herewith to the Court.

This suit was commenced to the January term of this Court, A. D. 1898. The plaintiff declared in the usual form on two judgments obtained by him against the defendant in the Circuit Court of the City of St. Louis, Missouri,—the first of date March 5th, 1896, for $2,278,63, and the other of date January 5th, 1897, for $923.75.

The defendant does not question the regularity or validity of these judgments, but pleads matters of set-off largely in excess thereof, and insists on a judgment in his favor for the difference. Four pleas were filed: (1) Common Counts—money had and received, interest and account stated. (2) Special plea based on what is called the contract of January 24th, 1893, and the proceedings of March 25th, 1893 (both of which will be explained later), and averring that plaintiff sold the bonds mentioned in the contract for $500,000 and received the money therefore; that plaintiff had expended, to wit: $300,000 in building the railway, and that was due defendant as per statement in the contract, to wit, $70,000 which was to be paid defendant as in the contract specified and which plaintiff should have paid out of the $200,000 remaining in his hands.

(3) Special plea based on the conveyance to plaintiff March 25th, 1893, from the Belleville and St. Louis Railway Company of a large tract of land for one dollar and other valuable considerations that the other valuable consideration was the promise of the plaintiff then and there made to pay the indebtedness of said Company then existing to divers parties, including one to defendant of, to wit, $60,000; that at the September Term, 1893, of this Court defendant brought suit against the Company for the amount so due him; that the Company notified plaintiff herein and he employed counsel and defended the suit, and defendant herein obtained judgment for $53,022.23, which judgment is still in full force and effect; sets up plaintiff's efforts to enjoin the prosecution of said suit, issues presented, to full hearing by the Court and dismissal of the bill.

(4th) Special plea setting out the deed in *haec verba* from the Belleville and St. Louis Railway Company to plaintiff of March 25th, '93, avers that the property conveyed thereby was of the value, to wit:—one hundred thousand dollars; that the Company at the time was indebted to divers persons in the sum, to wit:—of ninety thousand dollars including an indebtedness to defendant of, to wit:— sixty-five thousand dollars, of which indebtedness plaintiff had full notice; that the consideration of said deed was the promise of plaintiff then and there made to pay said indebtedness of the Company, including defendant's claim, within a reasonable time thereafter, which time has long since elapsed, and plaintiff has not paid said sum or any part thereof.

FINDING OF FACT.

In the Spring of 1889 defendant organized a railroad with a view of building a road from East St. Louis to Belleville with special reference to the coal fields lying near the bluffs. Later one Captain W. A. Adams became interested in the enterprise, and later still—in the fall of 1892—the matter was laid before the plaintiff Leathe. A statement was furnished him showing the amount that had been expended in the enterprise by defendant and others for which the Company was responsible. After an examination by plaintiff and an engineer employed by him he requested defendant to draw up a contract embodying briefly the substance of their previous conversation on the subject. Defendant then drew the paper generally referred to as the agreement of Jan. 24th, '93, referred to in 2nd plea. This was signed by defendant Thomas and Bart S. Adams

(son of Captain Adams, deceased) and handed to plaintiff for his signature and the signature of Mr. Chipley, a promoter who was to be co-partner in the matter with plaintiff. This instrument provided that Messrs. Leathe and Chipley were to put up funds to carry on the enterprise, and to negotiate $500,000 bonds of the Company; for a distribution of the capital stock of the Company; that each party was to receive back the amounts advanced to the enterprise as soon as the bonds were sold—Thomas and Adams the amounts as per statement rendered and Leathe the amount to be advanced by him and the balance to go into the Treasury; the first proceeds of bonds to be applied to payment of amounts advanced by Leathe until satisfied. This contract was not signed at the time by Messrs. Leathe and Chipley, though still retained in the possession of Mr. Leathe. In the meantime the plaintiff purchased valuable properties as he claims in pursuance of the contract, but as defendant claims taking the titles in his own name, so that he would be working under the contract or not as he might subsequently elect. A few weeks later matters culminated in the agreement generally referred to as the agreement of March 25th, '93, referred to in the 2d plea on that day to Belleville and St. Louis Railway Company conveyed to the plaintiff the property, rights of way, embarkments, superstructures, etc., of the company, "in consideration of one dollar and other valuable considerations from him to said Company moving." The same day as a part of the transaction he took an assignment of the stock transfer book of the Belleville City Railway Company 4995 shares of the capital stock of that

Company; then for the stated sum of $499,500 he conveyed to the Belleville City Railway Company said properties, which conveyance was accepted by the latter Company, as a full payment of One Hundred per cent on his said share of stock in that Company. Thereafter the enterprise was conducted and the road finished under the charter and judgment of the Belleville City Railway Company. Plaintiff, Leathe, being the principal stockholder, and directing and managing its affairs generally. Bonds were issued for the sum of $500,000, and later bonds, stock and all were sold by plaintiff for the sum of $500,000.

It is claimed by the plaintiff, substantially, that all he did in the premises was in pursuance of the agreement of January 24th; that the arrangement of March 25th imposed no additional burden on him, but related wholly to organizing under the Belleville City Railway Company charter instead of continuing under that of the Belleville & St. Louis Railway Company.

While plaintiff (claims to) have been acting with reference to the contract of Jan. 24th the evidence does not show conclusively that he was. It was not signed by him and Mr. Chipley until some time after the consummation of the arrangement of March 25th, and when it was signed by them Mr. Chipley swears Mr. Leathe suggested it would be well to forget the date of their signing it. And the matter of organizing under the Belleville City Railway Charter involved, according to the evidence, more than simply the selection of a name. It was known to all concerned that the Belleville and St. Louis Railway Company had some indebtedness. It was also understood that the stock of the

organization was to be fully paid, and that the conveyance from Mr. Leathe to the new organization was to be accepted in full payment of his stock. *In addition to this there is a clear preponderance of the testimony to the effect that plaintiff agreed as a consideration of the conveyance to him of the property and assets of the Belleville and St. Louis Railway Company to pay the debts of that Company, the amount of which debts the evidence shows he knew.* After the 25th of March, 1893, defendant brought suit in this Court against the Belleville and St. Louis Railway Company to establish the amount of the Company's indebtedness to him. Mr. Leathe, was notified to defend the suit if he wished to do so. He employed counsel and interposed a defense. The case was tried and judgment rendered for the defendant herein the sum of $53,022.23. *That judgment is still in full force and effect and represents an indebtedness which the undersigned holds the evidence shows the plaintiff promised to pay as a part of the consideration of the deed to him of March 25th,* 1893.

Conclusion of Law.

The undersigned finds as a conclusion of law that judgment should be rendered in favor of defendant against plaintiff *for the amount of said judgment* and interest thereon, less the amount of plaintiff's said judgments against defendant and interest thereon.

Defendant's judgment, Dec. 21st, 1893		$53,022.23
Int. Jan. 11, 1902, 8 yrs. 20 days, 5%		21,356.17
		$74,378.40
Deduct plaintiff's judgments:		
Judgmt. Mar. 5th, '96	$2,278.63	
Int. on 337.27 8% 5 yrs. 10 mos. 6 days	157.83	
1, 41, 36	681.40	
Judgmt. Jan. 5th, '97	923.75	
Int. 6% 5 yrs. 6 days	278.04	4,319.65
Balance		$70,058.75

for which judgment is recommended in favor of defendant Edward L. Thomas.

Respectfully submitted,

MARSHALL W. WEIR,
Referee.

Office Supreme Court, U. S.
FILED.
OCT 12 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

NO. 21.

Grace A. Leathe, Executrix of the Last Will and Testament of
SAMUEL H. LEATHE, DECEASED,
Plaintiff in Error.

vs.

EDWARD L. THOMAS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

STATEMENT OF FACTS.

Brief and Argument for Defendant in Error.

EDWARD L. THOMAS, PRO SE.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

NO. 21.

Grace A. Leathe, Executrix of the Last Will and Testament of
SAMUEL H. LEATHE, DECEASED,
Plaintiff in Error.

vs.

EDWARD L. THOMAS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

STATEMENT OF FACTS.

1st Facts in Record relating to First and Second Pleas of Set off

The Justices of the Supreme Court of Illinois in their dissenting opinion make this statement;

"NO EVIDENCE WAS INTRODUCED TO SUSTAIN EITHER THE FIRST OR SECOND PLEAS FILED BY DEFENDANT IN ERROR." Record Page 968.

Council for Plaintiff in Error makes the following statement;

"No evidence whatever was introduced by Defendant in error to support the First or Second Pleas."

Brief Page 8.

THE EVIDENCE IN THE RECORD.

Defendant in Error testified in Chief as follows:

"Mr. Samuel H. Leathe desiring to have a"
"statement of the matter, I furnished him a"
"statement * * of the amount of money"
"that I had expended, or for which the Com-"
"pany was responsible to me. That statement"
"is substantially, with the corrections made"
"upon it, on the last page, the same as the Bill"
"of Particulars filed in this case. The changes"
"were made in persuance of the terms of a let-"
"ter to Mr. Leathe, dated January 12, 1893."
"These changes resulted in DECREASING the"
"amount of the Claims, in the orginal state-"
"ment to Mr. Leathe, to the extent of $2,107.32."

Record Page 66.

CONTINUING IN CHIEF.

"I want to state one point; the amount found"
"due me by the Court in the case of Edward L."
"Thomas against the Belleville and St. Louis"
"Railway Company, was the amount of money"
"I had invested in the enterprise with interest"
"up to August 1st, 1893, as shown by this Bill"
"of particulars filed in this case, to my origi-"
"nal plea of Set off."

"Question by Mr. Turner Referee: What became"
"of the Injunction Suit?"

Ans. "The Injunction Suit was afterwards dis-"
"missed by the Court."

Ques. "Was an appeal taken in either one of those"
"Cases?"

Ans. "No appeal from either one of them was" "taken. The amount as shown, then to be due" "me, was the sum of $53,022.23 August 1st," "1893. It was agreed that we were to have" "six per cent interest on the amounts invested." Record page 71.

Bill of Particulars referred to in above testimony will be found on Record pages 11 to 16, which shows amount as sworn to to be $53,022.23, being same amount taken by Referee. Record page 38.

Facts as to Defendant in Error Claiming to recover under 1st and 2nd Pleas

Cross-Examination of Defendant in Error.

Ques. "I want to ask you the question, wether" "you propose to insist, before the Referee," "upon a recovery under this second Special "Plea."

Ans. "I propose to insist before the Referee," "upon a recovery on any Plea, that I have filed," "that the evidence, after it is all in before the" "Referee, may show that I am entitled to re-" "cover under."

Ques. "In other words, I understand then, you" "propose to insist upon all of the theories set" "out in these pleas"

Ans. "I propose to insist upon a recovery upon" "any Plea in this case, that the evidence may" "sustain, after the evidence is all in."

Witness then on being questioned goes on to state the amount due as $53,022.23.

Bills in chancery were then introduced by Defendant in Error, showing admissions of Plaintiff in Error. Record pages 95—117—287.

Plaintiff in Error testified that he sold Railway, Bonds mentioned in Second Plea $500,000.00 and $200,000.00 of Coal Bonds for $500,000.00 which he received. Record Page 350.

DEFENDANT IN ERROR TESTIFIED.

Ques. "And this Contract of January 24, was"
"your idea of what ought to have been done?

Ans. "That was my idea at that time. I will"
"state here that I should like to abide by it if I"
"could. I should have preferred it to any"
"other contract and would do it today if I could"
Record Page 498.

Cross Examination of Defendant in Error on his account rendered to Plaintiff in Error and testified to be same as Bill of Particulars filed in support of First Plea.

Record Pages 505 to 517.

Evidence of Plaintiff in Error, going into his account of money received and expended by him, and producing as exhibits to his testimony itemized account of the same, with extended cross-examination on items of expenditure.

Record Pages 602 to 648.

Itemized accounts of Plaintiff in Error.

Record Pages 650 to 691.

Admission of Plaintiff in Error that there is money due Defendant in Error.

Record Pages 715 to 716.

Admission goes so far as to say accounts will show.

Testimony of Defendant in Error on accounts of Plaintiff in Error, being examined in detail and producing complete analyses of the accounts.

Record Pages 717 to 802.

Complete explanations of Plaintiff in Error's accounts, prepared by Defendant in Error and referred to by him in above testimony.

Record pages 802 to 810.

On Record page 809 it is shown that the balance in hands of Plaintiff in Error was $98,254.72, then follows statement of claims of Defendant in Error and those connected with him, and to whom Plaintiff in Error was to account; testified to by Defendant in Error and not contradicted by any witness.

Testimony of Plaintiff in Error, entirely upon his accounts, and upon his liability to Defendant in Error and his associates, for whom Plaintiff in Error says he was Trustee.

Record pages 825 to 841.

An examination of this Record will show that two-thirds or more of its 979 pages contain evidence applicable only to the issues made on the First and Second Pleas of Set off. A large part of it being taking in an accounting case brought by one of the associates (Mr. John T. Taylor) of Defendant in Error, against Plaintiff in Error and read as evi-

dence in this case by agreement. All of which evidence is applicable only to these two pleas.

Record page 824.

2d. Statement of Errors assigned by Plaintiff in Error on Record in Supreme Court of Illinois

1st. The Appellate Court erred in not reversing the judgement of the Circuit Court of St. Clair County, Illinois.

2d. The Court erred in affirming the judgement of the said Circuit Court.

Record pages 930 to 931.

These being the only errors assigned.

Opinion of the Supreme Court of Illinois relating to errors assigned.

"While the exceptions and assignment of error, are entirely to general, to properly raise the questions of former adjudication insisted upon in the argument, if the objection had been aptly made, the Appellate Court considered and decided that question."

Error assigned upon this record upon this decision.

6th ERROR. Said Supreme Court of Illinois erred in holding that the exceptions in said cause to the report of the referee and Errors assigned thereon were to general to properly raise the question of RES-JUDICATA.

15th Error. To the same purport, but more particular.

BRIEF.

I. The errors assigned on the Record upon the appeal from the Appellate Court to the Supreme Court of Illinois, were too general to raise the question of former adjudication, and presented no question for determination upon that issue.

Opinion of Illinois Supreme Court,
Record page 961.

Louisiana A. & M. R. R. Co. vs. Board of Levee Com. vs. 87 Fed. R, 594.

Not being properly presented to the Court below this Court will not consider it.

Ansbro vs. United States 159 U. S. 695.

II. There is ample evidence to support the first and second pleas, and the affirmance of the case by the Supreme Court of Illinois, is in pursuance of a statute of Illinois.

Opinion of Illinois Supreme Court,
Record Page 961.

This Court will not not review or reverse a decision of a State Court upon a question of statutory practice.

Nobles vs. Georgia, 168 U. S. 398—405.

Egan vs. Hart, 165 U. S. 188.

Referring to the leading case of Eustis vs. Bolles, 150 U. S. 361.

This Court is bound by the construction of a statute of a state given to it by the Courts of that state.

Nobles vs. Georgia, 168 U. S. 388—405,

And numerous authorities citing Egan vs. Hart supra.

III. The question as to the effect to be given the report of a referee under the Illinois statute is governed by the practice and decisions of the local Courts. The statement of the Referee as to the facts is no part of his verdict. THE CONCLUSIONS OF LAW IS HIS VERDICT AND IS TREATED AS A GENERAL VERDICT OF A JURY.

Opinions of Supreme Court, Record page 961.

This construction is not reviewable in this Court. See authorities SUPRA: and is binding on this Court—

The three forgoing propositions are questions of State practice under State Statutes and being determined by the State Court, that determination is final.

IV. The decision upon these questions does not come in contact with the principial of "Due Process of Law" See Authorities Supra.

V. It must be clear upon principle that when a party invokes an adjudication, he is bound by it in every particular, and the adjudication must have the effect given it by the Court that made it, and when that Court itself finds what it adjudicated, and what it did not adjudicate, that finding is to be taken in all Courts as the extent of its adjudication.

The United States Court of Appeals held that the original cause of action had not been adjudicated and was still at large.

Belleville & St. Louis R. R. for use of Thomas vs. Leathe, 84 Fed. R.—103.

Leathe vs. Thomas, 109 Ill. App.—434.

VI. The doctrine of former adjudication does not extend to matters not in issue in the former suit

Black on Jugdement Sec. 731-732-733.

Gray vs. Gillian 15 Ill.—457.

The case cited by the dissenting Justices and by Counsel, namely Beloit vs. Morgan, 7 Wall 619 was practically overruled in Cromwell vs. County of Sac. 94 U. S.--351.

The Court in this latter case clearly announces the doctrine announced in this case by the Appellate Court of Illinois. See also Authorities cited and explained by Justice Field in Cromwell vs. County of Sac. 94 U. S.—351.

Belleville & St. Louis R. R. Co. for use of Thomas vs. Leathe, 84 Fed. R.—103.

And authorities there cited:

A party is not bound to join and prove all of his causes of action, although they arise from the same transtraction. Authorities Supra, Black on Judgments Sec. 733. Van Fleet on Former Adjudication Sec 279.

Van Fleet Sec. 279 shows that this Court is opposed to the Illinois Supreme Court, in the later decisions of that court—upon this question.

A suit upon a judgment is not upon the same promise as that upon which the judgment was rendered—wherefore if one sues on a judgment, and is defeated because he failed to show an adjudication, his original cause of action is not barred, because it

was not in issue, and the evidence necessary to sup- the judgment, could not be heard on a suit on the original cause of action; and VICE VERSA. The one recognized test is the evidence necessary to establish the several cases.

Black on Judgments Sec. 726.

Further, the evidence necessary to sustain the 4th Plea was not admissable under the declaration and could not if offered in the case in U. S. Court of Appeals, have altered the result.

Black on Judgments Sec 733.

ARGUMENT.

I. No proper assignment of errors below nor proper presentation in the Brief of the Errors relied on.

The number of Errors assigned upon this record would lead one at first blush to consider that Counsel were fishing for something to hang a semblance of an argument on, and while this court has in several cases condemned this practice, it is to be noticed that not a single specific error is mentioned by Counsel.

The rule of this Court (Rule 21) in regard to Briefs for Plaintiff, seems to have entirely escaped Counsel and if this Rule is to be enforced, nothing would be left of Plaintiff in Error's case, as this Court has frequently determined that a failure to comply in this respect amounts to an abandonment of the error.

The Brief filed neither specifically nor generally, refers to the 6th and 15th errors relating to the decision of the Court below, "That the exceptions taken and errors assigned are too general to raise the question of RES-JUDICATA."

The errors assigned on the Record from the Appellate Court as quoted, are simply, that the Court did not find the other way—and it is clear that no question was presented to the Supreme Court of Illinois, upon that nor any other specific claim of error under the decisions of this and other Federal

Courts cited, and this Court in order to consider the points so elaborately argued by Counsel, must constitute itself AMICUS CURIE for Plaintiff is Error, and must take up such errors as it may deem best to discuss, notwithstanding the lack of a proper specification or presentation of the Errors assigned under the decisions and Rules of this Court.

II., III., IV. Evidence in the Record as to 1st and 2d pleas.

The astounding statement is made by the dissent-justices below and it is to be presumed "INADVERTENTLY" followed by Counsel. "That no evidence WHATEVER was introduced by Defendant in Error to support the 1st and 2d Pleas."

The facts are, as shown, that not only was there ample evidence to support the first and second pleas, but Defendant in Error distinctly claimed a right of recovery under them, and the Plaintiff in Error produced his accounts and everything that could be done pro and con was done to establish or refute the issues made by these Pleas, and more than two-thirds of the Record devoted to them. There must be some reason for the statements made and it is to be found in the fact stated in the opinion of the Court below, and that is, that the Statute of Illinois quoted by the Court, compels the affirmance of the cause on those issues.—

Counsel seems to argue that Plaintiff in Error has not had his day in Court upon the issues made by these pleas—, admitting that if he had, the cross

action would not be barred by the determination of the 3rd and 4th pleas against the right of recovery under them.—His admission, and the fact itself, nullifies the entire argument of Counsel.—The Plaintiff in Error chose his forum when he brought his action. He is presumed to have known the law of that forum, and that no reversal could be had upon a failure to prove one count, when the Record contained evidence to support another.—The finding of facts under the Illinois Statutes, by the Refree as held by the Court of that state, constitute no part of his verdict.—All that the Supreme Court of Illinois could look at and all that this Court can examine into is the legal determination or verdict made up by the Referee and that is HIS CONCLUSION OF LAW. This has been held to be under the statutes of Illinois, the same as a general verdict of a jury. Will this Court say that such is not the force that is to be given to the statutes of Illinois, notwithstanding the position taken by the State Courts? Will this Court hold that because of a supposed erronous decision upon one point, that a reversal must be had of a cause, coming clearly within the laws of the Forum chosen voluntarily by the Plaintiff in Error upon another point which compells the Court below to affirm the cause? The claim is made by Counsel that the report of the Referee constitutes a special verdict under the Statute of Illinois, which statute is quoted only in part, Counsel inadverdently overlooking that part of the Statute, which provides the method of obtaining a special verdict and which shows the whole Statute to have not the slightest application to the case at bar.

The Supreme Court of Illinois has determined that this Statute does not apply.—Will this Court determine otherwise?

V. What did the United States Court of Appeals determine in the case relied upon as RES-JUDICATA? It is clear, that having invoked that determination as a defense to the 3d and 4th Pleas, Plaintiff in Error should be bound by it, and it is also clear upon principle that the adjudication should be given no greater scope than the Court that rendered it, gave to it.—That the Court's determination ought to be carried out in any Court before which it is called in question either as a weapon of attack or defense.—

There seems to have been a misconception of the purport of the 3rd and 4th Pleas filed herein and they have been continuously classed together and the mistake made of claiming that the 3rd Plea sets up the same cause of action set up in the 4th plea.

The 4th plea set up the original promise to pay the debt of the Railway Company to Thomas as the consideration of a deed by the Company to Leathe.—

This Plea is similar in every respect to the first Count in the declaration in the United States Court of Appeals. Record Page 385.

Which Count was dismissed by Plaintiff before trial. Record page 393.

The 3rd Plea is similar to the second and third Counts of that declaration, upon which the case was tried. Record page 385—393.

The error fallen into by the dissenting justices and counsel is that these two Pleas are identical and "founded solely on the instrument of March 25th and the only question put in issue by those Pleas was, wether or not Leathe by reason of that conveyance or contract became personally liable for this debt of the Railway Company; so that the exact identity of the issue was raised in that action (referring to action in U. S. Court) and those presented by the 3rd and 4th Pleas on this record, is therefore established, and, IS IN FACT NOT NOW CONTOROVERTED BY THOMAS."

Extract from Brief for Plaintiff in Error, page 15.

This statement is clearly erronuous, and Defendant in Error speaking for himself is unable to learn how Counsel can so far forget and overlook the former adjudication made by the U. S. Court of Appeals as to make the assertion that Thomas does not now controvert this suppositious fact.— Such an assertion is wholly unwarranted by the record and is at variance with the true state of the facts.—

Defendant in Error has always claimed and does now that these two Pleas do not BOTH rely on the the promise, nor are the issues identical. In fact, they are widely divergent, as will be seen.—

The 4th Plea as stated relies on the promise.

The 3rd Plea does not.

The 3rd Plea, by matter simply of inducement leading up to the real issue, set up the promise but does not rely it.

The sole issue as presented by that plea is "That it was ADJUDICATED in the causes set out in the Plea that the promise had been made and the offer to prove that Plea as of necessity IS BY THE RECORD HERE NOW SHOWN TO THE COURT, and was the sole and only issue before the U. S. Court of Appeals, as shown by the opinion of that court.

Record page 598 et seq.

Upon the dismissal of the first Count of the declaration no issue was presented as to whether or not the promise had been made. Upon the second and third Counts or 3rd Plea, nothing could be heard but the record, and before a recovery could be had, the record must show NOT THAT THE PROMISE HAD BEEN MADE AS SET UP IN THE FIRST (DISMISSED) COUNT AND 4TH PLEA, BUT THAT IN THOSE CASES, SET UP IN THE SECOND AND THIRD COUNTS, AND IN THE THIRD PLEA, it had been ADJUDICATED THAT THE PROMISE had BEEN MADE.

The issue in one is as far from the the other as it is possible to be. But the chief criterion of the divergence of these issues becomes apparent, when we consider what evidence could be introduced under one and under the other.—

Could the Records have been introduced under the first Count or under the 4th plea—would those records have been competent to prove the original promise? But to state the prosition is sufficient to negative it.

On the other hand would proof of the original promise have been admitted under the 2nd and 3rd

Counts and under the 3d plea, to prove that it had been ADJUDICATED that such promise had been made, Must that not be shown by the record and by the record alone—Suppose under the 3d plea, that for the first time, evidence of the promise should be given and that such evidence had not been offered in the trial of the causes set up in that plea, and the Records presented failed to show such evidence was offered—would it be competent evidence to prove THAT IT HAD BEEN ADJUDICATED, that such a promise had been made.—It is true, on a general Record proof may be made ALIUNDE as to what was done that resulted in the making of the Record, if the Record does not itself disclose what was done.—But the distinction is clear, PROOF OF WHAT WAS PROVEN —may be given, but no evidence is admissible to prove the original cause of action.

In the case under discussion no proof of what was proven could be heard, because the record purports on its face to contain all of the evidence heard and could not therefore be added to.

It is clear from these facts and from the opinion of the Court of appeals that the issues are not the same presented by the 3rd and 4th pleas and the evidence proper to sustain one of them could not be introduced to sustain the other.

The decision of the Court of Appeals, deciding that when a defense was definitely made, evidence heard upon it, and this too in a chancery case, with the question clearly before the Court, and the Bill on the hearing dismissed on the merits, did not determine that question and that that question was still

at large between the parties, is now held up as deciding that question adversely to the claims made in the defense set up in that case.—This Court is called upon to reverse this case with such facts presented to it.

It is said that the law is that a defendant in Chancery must set up all of his defenses or he will be forever barred.—In the case referred to this defendant did that—The case was tried on its merits—evidence pro and con was heard on the issue, of the promise set up in the 4th plea.—The Complainant lost his case.—The Court of Appeals determines that although the issue was presented, although there was a determination against Plaintiff in error, yet the question in issue in the 4th plea is still at large between the parties, and this Court is asked to hold that this determination made upon a CHANCERY record shall barr a recovery upon the same question between the same parties bound equally by that adjudication. Is this Plaintiff in Error in a position to ask that the determination of that Court shall have a wider scope than the Court itself gave it?—

Is this Plaintiff in Error not estopped from saying that a Court that determined as the Court of Appeals did, that a long litigation with the question fairly presented, and an adverse dicision to Plaintiff in Error did not settle the question as to his liability, but that that question was still at large between the parties, that that decision, determined that he had never MADE the promise set out in the 4th Plea.

What sort of justice is to be meted out to Defendant in Error?

A Chancery Case is tried on its merits. Under the law the defendant brings forward all of his defenses including the one set up in the plea—the record shows that all of the oral testimony and the greater part of the written was directed to this issue—the defendant is successful—He brings suit alleging solely that that was an adjudication of the issue, and offers to prove it by the Record, the only competent evidence. His evidence is excluded as not proving such an adjudication. No other evidence was competent—the sole issue was as to whether it had been adjudicated—and now to cap the climax he is to be barred from proving that promise, directly in opposition to the determination of the Court of Appeals and in opposition to all authority applicable to a case at LAW.

VI. It will be noted that Counsel does not extensively argue the question as to the case in the Court of Appeals being RES-JUDICATA of the issue presented by the 4th plea. — It has never been contended that the decision of the Court of Appeals did not determine the issue made by the 3rd Plea, but the contention has been that it left at large the question presented by the 4th Plea.

The broad assertion is made in many cases, that not only what is presented either as a cause of actions or as a defense, but what might have been presented, must be presented, or the law of RES-JUDICATE will go against it as well.

This principle is not sound and is not sustained by the weight of authority, and it will be found that nearly all of the cases announcing the rule are

Chancery cases, and that cases at Law are upon a different ground more especially as to the causes of action by Plaintiff.

A Plaintiff may have more than one cause of action arising out of the same transaction, and may be defeated in the one tendered, and still may bring another action for another cause.

The main case cited by Counsel upon this point namely the town of Beloit vs. Morgan 7 Wall 619; was cited and relied on by Mr. Justice Miller in his dissenting opinion in Cromwell vs. the County of Sac. 94 U. S. 351, and for all practical purposes was overruled by the Court in that Case.—In the case of Cromwell vs. County of Sac this Court fully reviewed all of the authorities and pointed out clearly the destinction to be made and practically determined the case at bar.

Van Fleet in his former adjudication, Sec. 279 points out the conflict existing between the different Courts and places this Court in opposition to the Courts of Illinois in the later decisions of that Court. The Illinois Court in an old and well considered decision, made the distinction contended for after a full review of all of the cases being the same cases reviewed by this Court in Cromwell vs. the County of Sac. The case referred to, is the case of Gray vs. Gillian 15th Ills, 457.

After reviewing all of the cases it comes to the leading case of LeGuen vs. Gouveneur 1 Johns Cas. 492 and says "the broad rule is laid down that the judgment not only bars everything litigated in it, but everything that might have been litigated."

"This broad doctrine * * was laid down in reference to the ground of Equity jurisdiction, as respects relief from judgments at law, and in that application, it is doubtless correct. Equity will not take jurisdiction of a matter which might have been set up as a defence at law, and relieve a party from his own negligence.

"BUT WHEN IT IS APPLIED AS A RULE OF BARRING CAUSES OF ACTION, OR GROUNDS OF DEFENSE WHICH WERE SUSCEPTIBLE OF BEING JOINED TOGETHER, IN AN ACTION AT LAW, BECAUSE THEY WERE NOT, IT IS TOO BROAD AND IS NOT SUSTAINED AY AUTHORITY.

This enunciation is clearly in line with the cases in this Court, and it will be found that in nearly every case where the general rule announced in Le Guen vs. Gouverneur Supra is held to be the rule, the Court reserves the non-application of the rule to special cases.

The apparent injustice of applying this rule by this Court will be seen, when it is considered, that the Court of Appeals a Court of last resort in that case, refusing to apply the rule in the case determined by it (a much stronger case than the case at bar) must be held by that refusal to have made a case to which the rule does apply.

Common justice would seem to call for an equality before the law of these parties, and the holding by one Court that direct litigation upon a point still leaves it at large between the parties ought not be construed by any Court as a determination against the party in whose favor the first decision was had;

Therefore the question raised by the 4th plea was not RES-JUDICATA, and upon that point the Appellate Court ol Illinois, was justly right.

"It is clear from this reference to the finding of the United States Court that there was no adjudication in that Court upon the issue as to whether Leathe promised to pay the debts of the Belleville and St. Louis Railway Company as a consideration for the property conveyed by said deed.

There is nothing in the opinion or judgement of the United States Court that decides any question now litigated. There was no error then in overruling the exception to the Referee's report, because it failed to find that the claim made, that Leathe absolutely promised to pay the debts of the Belleville & St. Louis Railway Company had been adjudicated in favor of Leathe."

LEATHE VS. THOMAS, 109 Ill., App. 434.

It is respectfully submitted that this case in furtherance of the ends of Justice should be affirmed.

EDWARD L. THOMAS,
Pro Se.

LEATHE v. THOMAS.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 21. Argued October 17, 1907.—Decided November 11, 1907.

In a case coming from a state court this court can consider only Federal questions decided adversely to the plaintiff in error and upon which a decision was necessary to the decision of the case, and if the judgment complained of is supported also upon other and independent grounds it must be affirmed or the writ of error dismissed.

When the record discloses other and completely adequate grounds on which to support the judgment of a state court, this court does not commonly inquire whether the decision upon them was correct or reach a Federal question by determining that they ought not to have been held to warrant the result.

Writ of error to review 218 Illinois, 246, dismissed.

THE facts are stated in the opinion.

Mr. John Maynard Harlan, with whom *Mr. James S. Harlan* and *Mr. Victor Koerner* were on the brief, for plaintiff in error:

The issue raised by the third and fourth pleas of set-off is identical with the issue adjudicated in the case of *Belleville & St. Louis Railway Co. for the use of Thomas* v. *Leathe*, 84 Fed. Rep. 103, namely, Leathe's personal liability or non-liability under the instrument of March 25, for the debts of the railway company, and, therefore, the subject matter of these pleas is *res judicata*. Moreover, the only issue in this case in the lower court was that raised by the third and fourth pleas of set-off and that issue having been decided in favor of Leathe in the Federal court, the state court should have given full faith and credit in this suit to the judgment of the Federal court. This it did not do.

If, as claimed by the defendant in error and as held by the Supreme Court of Illinois in its second and final opinion, the judgment in that court was founded, not on the third and fourth pleas, but on the first and second pleas of set-off, then

the plaintiff in error has not been accorded due process of law since no evidence whatever was adduced in support of the first and second pleas; there were no findings based upon those pleas and no trial whatever was had upon them.

This court has jurisdiction to inquire whether full faith and credit and full force and effect have been given to the judgment of the Federal court; in determining this question the court may examine the entire record. *Washington Gas Co.* v. *District of Columbia*, 161 U. S. 316.

Rights acquired under a Federal judgment are substantial rights which this court will guard and protect. When a Federal court has, by its final judgment, disposed of a controversy, the person in whose favor the judgment was so rendered may confidently rest upon it as giving him a substantial and practical immunity from further prosecution on the same subject matter.

This court will not be controlled by the mere surface appearance of things as created by the opinion of a state court, but, in the protection of rights acquired under a Federal judgment, will look into the substance of things and ascertain their real character.

Whether a state court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States and comes within the jurisdiction of this Court. *Crescent Live Stock Co.* v. *Butchers' &c. Co.*, 120 U. S. 141; *Washington Gas Co.* v. *District of Columbia*, 161 U. S. 316.

Mr. Edward L. Thomas, defendant in error, *pro se:*

The errors assigned on the record upon the appeal from the appellate court to the Supreme Court of Illinois, were too general to raise the question of former adjudication, and presented no question for determination upon that issue. *Louisiana, A. & M. R. R. Co.* v. *Board of Levee Com.*, 87 Fed. Rep. 594.

Not being properly presented to the court below, this court will not consider it. *Ansbro* v. *United States*, 159 U. S. 695.

There is ample evidence to support the first and second pleas,

and the affirmance of the case by the Supreme Court of Illinois is in pursuance of a statute of Illinois. This court will not review or reverse a decision of a state court upon a question of statutory practice. *Nobles* v. *Georgia*, 168 U. S. 398–405; *Egan* v. *Hart*, 165 U. S. 188; *Eustis* v. *Bolles*, 150 U. S. 361.

This court is bound by the construction of a statute of a State given to it by the courts of that State. *Nobles* v. *Georgia*, 168 U. S. 388–405.

The question as to the effect to be given the report of a referee under the Illinois statute is governed by the practice and decisions of the local courts. The statement of the referee as to the facts is no part of his verdict. The conclusions of law are his verdict and are treated as a general verdict of a jury.

This construction is not reviewable in this court, and is binding on this court.

The three foregoing propositions are questions of state practice under state statutes and, being determined by the state court, that determination is final.

When a party invokes an adjudication, he is bound by it in every particular, and the adjudication must have the effect given it by the court that made it, and when that court itself finds what it adjudicated, and what it did not adjudicate, that finding is to be taken in all courts as the extent of its adjudication.

The Circuit Court of Appeals held that the original cause of action had not been adjudicated and was still at large. *Belleville & St. Louis R. R. for use of Thomas* v. *Leathe*, 84 Fed. Rep. 103; *Leathe* v. *Thomas*, 109 Ill. App. 434.

The doctrine of former adjudication does not extend to matters not in issue in the former suit. Black on Judgments, § 731; *Gray* v. *Gillian*, 15 Illinois, 457.

The case cited by the dissenting justices and by counsel, namely, *Beloit* v. *Morgan*, 7 Wall. 619, was practically overruled in *Cromwell* v. *County of Sac*, 94 U. S. 351; and see *Belleville & St. Louis R. R. Co.* v. *Leathe*, 84 Fed. Rep. 103, and authorities there cited.

A party is not bound to join and prove all of his causes of action, although they arise from the same transaction. Black on Judgments, § 733; Van Fleet on Former Adjudication, § 279.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action upon judgments obtained in Missouri by the plaintiff in error against the defendant in error, hereafter called respectively plaintiff and defendant. The defendant, not denying the judgments, pleaded four pleas in set-off. The first was for money had and received, interest, and upon an account stated. The second was upon an alleged contract of January 24, 1893. The third set up an alleged contract of March 25, 1893, to pay the debt of a railroad company to the defendant, a suit and judgment for the defendant against the railroad company, a bill in equity brought by the plaintiff to enjoin the proceedings in that suit, upon which one of the issues was the liability under the contract, and that after a hearing the bill was dismissed. The fourth plea was on the contract of March 25, without more. There was a general replication denying the pleas, and also a special replication to the third and fourth, to the effect that a suit upon the alleged contract was brought against the plaintiff for the use of the defendant and removed to the United States Circuit Court and there determined in favor of the present plaintiff, the proceedings set up in the third plea being held not conclusive. (The suit referred to is *Belleville & St. Louis Ry. Co.* v. *Leathe*, 84 Fed. Rep. 103.) The case was sent to a referee to report his conclusions of law and fact. The referee reported in favor of the defendant and also reported the evidence. The trial court ordered judgment on the referee's report. This judgment was affirmed by an intermediate court and then was taken by writ of error to the Supreme Court of the State. That court held that the judgment of the United States Circuit Court made the matter of the third and fourth pleas in set-off *res judicata*, and reversed the judgment of the court below. But, upon a rehearing, the court, while adhering

to its judgment upon the third and fourth pleas, stated that it had overlooked the first and second, that the judgment could be sustained upon them, that there was evidence to support them both, or at least the first, and that the referee's finding might be supported under the first. On these grounds the judgment was affirmed. 218 Illinois, 246.

The case now is here on a writ of error, the errors alleged being that full faith and credit was not given to the judgment of the United States court, and that the present judgment was rendered without due process of law. It is true that the judgment of the United States court was held binding against the pleas to which it applies, but it is said that it is emptied of all real effect if a judgment can be entered upon the first and second pleas, referring to earlier stages of the same transaction, because it is said that there was no evidence to support those pleas and no finding upon them, so that to support the judgment by their presence on the record is a mere pretense, and either is a denial of due credit to the former judgment or deprives the plaintiff of his property without due process of law.

In order to dispose of the case it is not necessary to state the dealings in detail; the following outline is enough: The defendant wanted money from the plaintiff to start a railway company. An agreement with regard to it was made on January 24, 1893, out of which, with the accompanying and subsequent transactions, the defendant sought to establish a right to be reimbursed for his advances to the road. Later, on March 25, of the same year, there was a conveyance of its property by the railway company to the plaintiff and a conveyance by him to another company. The former deed was for one dollar and "other valuable considerations to it from him moving," and the defendant alleged that the other considerations embraced a promise of the plaintiff to reimburse him. The referee's report refers to the dealings of January, but seemingly discovers no contract of reimbursement in them. It shows that the plaintiff insisted that all that he did was under the agreement of that month, but says that the evidence does not prove it con-

clusively. It says that matters culminated in the agreement of March 25, and finds that as part of the consideration of that deed the plaintiff promised to pay.

The judgment purported to be based upon the referee's report, and it may be that, if it were our concern to deal with it, we should find it hard to discover sufficient warrant for a judgment on the first or second pleas. The general line of thought which the report follows seems to lead to the third and fourth. The conclusion is that the defendant is entitled to recover the amount of the judgment mentioned in the third plea, and this follows immediately after the finding of the plaintiff's promise. The plaintiff excepted to the referee's failure to find that everything was done under the January contract. And further reasons might be given for thinking that the court below was wrong. Even if the words of the judgment, "renders judgment on said referee's report," should be held to include the evidence as well as the referee's findings, and if it should be presumed that one of the courts below the Supreme Court of the State had reconsidered the evidence before entering or affirming the judgment, still, although there was evidence enough of the defendant's advances to the railway company, we might assume, for purposes of argument, that there was nothing sufficient to make out a promise on the plaintiff's part before March. But on the most favorable statement that we can make on the side of the plaintiff in error we can see no ground for coming to this court.

It is admitted that the general and well-settled rule is that in a case coming from a state court this court can consider only Federal questions, and that it cannot entertain the case unless the decision was against the plaintiff in error upon those questions. *Murdock* v. *Memphis*, 20 Wall. 590; *Sauer* v. *New York*, 206 U. S. 536, 546. It is admitted further, that a decision upon those questions must have been necessary to the decision of the case, so that if the judgment complained of is supported also upon other and independent grounds, the judgment must be affirmed or the writ of error dismissed, as the case may be.

Murdock v. *Memphis, supra.* But *Murdock* v. *Memphis* does not stop there. It further establishes that when the record discloses such other and completely adequate grounds this court commonly does not inquire whether the decision upon them was or was not correct, or reach a Federal question by determining that they ought not to have been held to warrant the result. 20 Wall. 590, 635; *Eustis* v. *Bolles*, 150 U. S. 361, 369; *Castillo* v. *McConnico*, 168 U. S. 674, 679.

Of course, there might be cases where, although the decision put forward other reasons, it would be apparent that a Federal question was involved whether mentioned or not. It may be imagined, for the sake of argument, that it might appear that a state court even if, ostensibly deciding the Federal question in favor of the plaintiff in error, really must have been against him upon it, and was seeking to evade the jurisdiction of this court. If the ground of decision did not appear and that which did not involve a Federal question was so palpably unfounded that it could not be presumed to have been entertained, it may be that this court would take jurisdiction. *Johnson* v. *Risk*, 137 U. S. 300, 307. But there is nothing of that sort in this case. At first, having in mind only the third and fourth pleas, to which alone the judgment of the United States court was a bar, the Supreme Court decided in favor of the plaintiff. It affirmed the judgment below only upon a rehearing, and after its attention had been called to the first and second pleas. It did not recede from or qualify its former decision so far as that went, but simply pointed out that there were other pleas to which the replication of *res judicata* did not apply and on which the judgment might be upheld. Suppose that it was mistaken as to the evidence, the mistake was upon a matter admitting of hesitation, for which it would seem from the opinion that there were special reasons in the state of the record and the admission of counsel. The question is one with which by the general rule we have nothing to do, and we see no reason why the general rule should not be applied.

The first and second pleas were on the record and at issue.

The plaintiff had notice that the defendant meant to prevail on whatever ground he could. He had his hearing, even if it should be thought that he might have insisted on a ruling that there was no evidence to support those pleas. However it is put, the claim of a right to resort to this court after the only Federal question has been decided in the plaintiff's favor, must fail.

Writ of error dismissed.

MR. JUSTICE HARLAN and MR. JUSTICE DAY dissent.